TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. 212

THE UNITED STATES OF AMERICA, PETITIONER

vs.

WILLIAM F. BRIMS, STANLEY MUSZALSKI, B. J. G. WITTMAN, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 3, 1926
CERTIORARI GRANTED OCTOBER 25, 1926

(31442)

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1 [Caption omitted.]

2 In United States District Court for the Northern District of Illinois, Eastern Division

6302. The United States vs. Andrews Lumber & Mill Company et al.

Order to file indictment

September 2, 1921

Comes the grand jury this day and return in open court an indictment against Andrews Lumber & Mill Company et al., the defendants herein, whereupon, on motion of the United States attorney, it is ordered by the court that said indictment be filed and the cause placed upon the dockets of this court; and that the amount of the bail bond be fixed at the sum of five thousand dollars for defendant Harry Jensen.

And afterwards, to wit, on the 2nd day of September, A. D. 1921, there was filed in the clerk's office of said court, in the above entitled cause, an indictment, same being in the words and figures following, to wit:

3 In United States District Court

Indictment

Filed Sept. 2, 1921

NORTHERN DISTRICT OF ILLINOIS,
Eastern Division, ss:

The grand jurors for the United States of America empaneled and sworn in the District Court of the United States for the Eastern Division of the Northern District of Illinois at the July term of said court in the year 1921, and inquiring for said division and district, upon their oath present, that throughout the period of time extending from September 2, 1918, to the day of finding and presentation of this indictment, the following named concerns, among others, have, at their manufacturing plants located at the places mentioned in connection with their respective names, carried on the business of manufacturing certain building materials, to wit, sash, doors, and interior finish:

Chicago concerns (including Cook County)

Andrew Lumber & Mill Company, 1757 Foster Avenue; R. W. Bartelmann Company, 910 Wood Street; Beck Coal and Lumber Company, Harvey, Illinois; California Manufacturing Company, 2243 South Troy Street; Chicago and Riverdale Lumber Company, 341 East 156th Place; Commercial Sash and Door Company, 4914 South Paulina Street; The A. Dietsch Company, 2640 Sheffield Avenue; Barr and Collins, Oak Park, Illinois; Vincent Dlouhy Sash and Door Company, 2138 Laflin Street; Hartman-Sanders Company, 2155 Elston Avenue; Melrose Mill Company, 2707 Clybourn Avenue;

William Morris & Sons Company, 1000 West 50th Street; Nolan and Wolff Manufacturing Company, 1711 Fullerton Avenue; C. E. Peterson Company, 4914 Wentworth Avenue; Philip Rinn Company, Division and Crosby Streets; South Side Interior Finish Company, 5837 Laflin Street; Chicago Sash, Door & Blind Manufacturing Company, 1249 West North Avenue; Standard Sash and Door Company, 5821 South Racine Avenue; Union Interior Finish Company, 5319 South La Salle Street; Von Platen and Dick Company, 2216 West Kinzie Street, and Hardwood Products Company, 122 South Michigan Avenue.

Concerns outside of Illinois

Paine Lumber Company, Limited, Oshkosh, Wisconsin; The Morgan Company, Oshkosh, Wisconsin; The Gould Manufacturing Company, Oshkosh, Wisconsin; The R. McMillan Company, Oshkosh, Wisconsin; The Radford & Wright Company, Oshkosh, Wisconsin; Conway Company, Milwaukee, Wisconsin; Matthew Bros. Manufacturing Company, Milwaukee, Wisconsin; Moore & Galloway Lumber Company, Fond du Lac, Wisconsin; The Curtis Company, Inc., Clinton, Iowa; Farley & Loetscher Manufacturing Company, Dubuque, Iowa; Roach & Museer Company, Muscatine, Iowa; American Sash and Door Company, St. Louis, Missouri; and Roddis Lumber and Veneer Company, Marshfield, Wisconsin; and that the concerns above named whose plants are located outside of the city of Chicago and in other States than Illinois, have, throughout said period of time, been desirous of selling their building materials to builders and building contractors in said city of Chicago for use in the construction of houses and other buildings there, and shipping and delivering the same in pursuance of sales thereof from their said plants to such builders and contractors, and so of carrying on interstate trade and commerce therein, and would have been able freely so to do, and would so have done, but for the unlawful conspiracy in restraint of said trade and commerce which the above named Chicago concerns and certain of their officers, agents, and employees actively engaged in conducting the business and affairs of said Chicago concerns, together with the union and contractor defendants hereinafter named, have, throughout said period of time, as hereinafter set forth, engaged in, said officers, agents, and employees of said Chicago concerns being named in the following list, which shows the concerns to which they severally belong, such names including full Christian names wherever they are known to said grand jurors, and all of said officers, agents, and employees, being made defendants to this indictment and hereinafter, with said Chicago concerns, designated as manufacturer defendants, to wit:

W. A. Irvine (Andrews Lumber & Mill Company).
R. W. Bartelmann (R. W. Bartelmann Company).
Peter Beck (Beck Coal and Lumber Company).
Frank Bartuska (California Manufacturing Company).

E. S. Gamble, G. H. Dekker (Chicago and Riverdale Lumber Company).
G. C. De Swarte (Commercial Sash and Door Company).
Arthur Dietsch (The A. Dietsh Company).
Frank S. Collins (Barr and Collins).
Theodore Kartheiser (Vincent Dlouhy Sash & Door Company)
P. J. Deidner (Hartman-Sanders Company).
Louis C. Haring (Melrose Mill Company).
Harry F. Morris (William Morris & Sons Company).
Arthur Root (Nollau and Wolff Manufacturing Company).
John Westberg (C. E. Peterson Company).
George P. Rinn (Philip Rinn Company).
August Newquist (South Side Interior Finish Company).
Ewald Dierssen (Chicago Sash, Door & Blind Mfg. Company).
John Algot Olson (Standard Sash and Door Company).
Frederick Werkmeister, T. E. Reynolds (Union Interior Finish Company).
H. D. Traeger, James A. Dick (Von Platen and Dick Company).
E. D. Beals (Hardwood Products Company).

And the grand jurors aforesaid, upon their oath aforesaid, do further present that said manufacturer defendants, throughout said period of time, at Chicago aforesaid, in said division and district, have manufactured practically all of such building materials manufactured in said city, and in order to monopolize the business of supplying said builders and building contractors in Chicago with such building materials and secure excessive prices for their own building materials unlawfully have throughout said period there continuously engaged in a conspiracy among themselves and with the union and contractor defendants hereinafter named, in unreasonable restraint of, and which, as hereinafter shown, in fact has substantially, materially, and unreasonably restrained the trade and commerce of said concerns and of many other concerns to said grand jurors unknown, whose plants are located outside of said city of Chicago and in other States than Illinois, by preventing said concerns and other concerns from and obstructing them in selling and delivering their building materials in and shipping the same to said city of Chicago for delivery there in competition with said building
6 materials of said manufacturer defendants; which said unlawful conspiracy and the circumstances under which the same was formed and has been consummated are now here described in detail.

The work of installing all building materials in houses and buildings in Chicago has throughout said period of time practically all been done by carpenters and joiners belonging to the United Brotherhood of Carpenters and Joiners of America, a labor organization, and so builders and building contractors throughout said period have been under the practical necessity of employing members of said organization and submitting to the rules of said organization, because there have not been enough carpenters and joiners there or other-

wise obtainable not belonging to said organization to perform more than a very small fraction of the work required to be done in that line.

Said manufacturer defendants before said period of time employed a great number, to wit, thirty-five hundred carpenters and joiners in their factories at Chicago aforesaid in the manufacture of such building materials, who by way of distinguishing them from carpenters and joiners engaged in installing such building materials in houses and buildings as aforesaid were called "inside" men, many of whom were not members of said organization.

Said manufacturer defendants before said period of time, to wit, on April 18, 1918, by offering to employ thereafter as such "inside" men only carpenters and joiners who were members of said organization had induced said organization and its members thereafter to refuse to install any of such building materials in houses and buildings in said city as should be sold by said manufacturing concerns whose plants were located outside of said city of Chicago and outside of said State of Illinois to builders and building contractors in said city for shipment and delivery to, and which should be shipped and delivered to, said city, which said offer was thereupon accepted; and from that time forward said manufacturer defendants and the members of said organization did conduct and throughout said period of time have conducted themselves accordingly and so effectively have they worked in unison throughout said period with respect to the matters aforesaid that said concerns whose plants are located outside of said city and State have been unable to sell or deliver in said city any appreciable quantity of said building materials so manufactured by them, or ship any such building materials to said city in pursuance of sales thereof, and have been com-
7 pelled to forego carrying on such interstate trade and commerce therein so far as said city of Chicago has been concerned, while the people of said city have been compelled by the resulting scarcity of and the exorbitant prices for such building materials to forego the building of a great number of houses and buildings required by them to house the people and conduct the business of said city, all to the great detriment of the morals and prosperity of those people and of the people of the United States.

The following persons as members of said organization have been active in aiding and abetting said manufacturer defendants in engaging in said unlawful conspiracy throughout said period of time, and so have themselves unlawfully engaged therein, and are accordingly indicted herein and made defendants to this indictment and referred to as union defendants, full Christian names being given wherever known to said grand jurors, to wit: William F. Brims, Stanley Muszalski, B. J. G. Wittman, Anton Sommers, James Smith, Joseph B. Fox, F. C. Bromley, Joseph Dusek, John Loris, Thomas F. Flynn, W. G. Schardt, William C. White, Daniel J. Ryan, Joseph Veltman, Charles Wright, Thomas Church, and Harry Jensen.

And the following persons, as officers and members of the Carpenter Contractors' Association of Chicago, an association of carpenter contractors engaged in constructing houses and buildings in Chicago aforesaid, have throughout said period of time actively aided, abetted, counseled, induced, and procured said manufacturer and union defendants so to engage in said unlawful conspiracy, and so have themselves engaged therein, and are accordingly herein indicted and made defendants to this indictment and referred to herein as contractor defendants, their full Christian names being given wherever they are known to said grand jurors, to wit: D. H. Doyle, A. C. Wehrwein, Frank E. Dougherty, William J. Scown, Frank M. Stressenreuter, and T. J. McGimsie.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that each of said manufacturer defendants, when so engaging, throughout said period of time, in said unlawful conspiracy in restraint of said interstate trade and commerce of said manufacturing concerns whose plants were located outside of said State of Illinois, and each of said union and contractor defendants, when so aiding, abetting, counseling, inducing, and procuring said manufacturer defendants so to do, well knew all of the circumstances and premises aforesaid, and intended to bring about
8 the above-mentioned results of said unlawful conspiracy, and to restrain said interstate trade and commerce in the way above described.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that said Andrews Lumber & Mill Company, R. W. Bartelmann Company, Beck Coal and Lumber Company, California Manufacturing Company, Chicago and Riverdale Lumber Company, Commercial Sash and Door Company, The A. Dietsch Company, Barr and Collins, Vincent Dlouhy Sash and Door Company, Hartman-Sanders Company, Melrose Mill Company, William Morris & Sons Company, Nollau and Wolff Manufacturing Company, C. E. Peterson Company, Philip Rinn Company, South Side Interior Finish Company, Chicago Sash, Door & Blind Manufacturing Company, Standard Sash and Door Company, Union Interior Finish Company, Von Platen and Dick Company, Hardwood Products Company, W. A. Irvine, R. W. Bartelmann, Peter Beck, Frank Bartuska, E. S. Gamble, G. H. Dekker, G. C. De Swarte, Arthur Dietsch, Frank S. Collings, Theodore Kartheiser, P. J. Weidner, Louis C. Haring, Harry F. Morris, Arthur Root, John Westberg, George P. Rinn, August Newquist, Ewald Diersen, John Algot Olson, Frederick Werkmeister, T. E. Reynolds, H. D. Traeger, James A. Dick, E. D. Beals, William F. Brims, Stanley Muszalski, B. J. C. Wittman, Anton Sommers, James Smith, Joseph B. Fox, F. C. Bromley, Joseph Dusek, John Loris, Thomas F. Flynn, W. G. Schardt, William C. White, Daniel J. Ryan, Joseph Veltman, Charles Wright, Thomas Church, Harry Jensen, D. H. Doyle, A. C. Wehrwein, Frank E. Doherty, William J. Scown, Frank M. Stressenreuter, and

T. J. McGimsie, throughout the period of time, under the circumstances, and in manner and form, aforesaid, unlawfully have engaged in a conspiracy in restraint of trade and commerce among the several States of the United States; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

CHARLES F. CLYNE,
United States Attorney.

[File endorsement omitted.]

9 [Clerk's certificate to foregoing paper omitted in printing.]

In United States District Court

[Title omitted.]

Demurrer to indictment of defendants Wm. F. Brims et al.

Filed Sept. 15, 1921

Now come the defendants, William F. Brims, Stanley Muszalski, B. J. G. Wittman, Anton Sommers, James Smith, Joseph B.
10 Fox, F. C. Bromley, Joseph Dusek, John Loris, Thomas F. Flynn, W. G. Schardt, William C. White, Daniel J. Ryan, Joseph Veltman, Charles Wright, Thomas Church, and Harry Jensen, jointly and severally, by Hope Thompson, their attorney, and demur to the said indictment, and say that the said indictment is not sufficient in law, and that they, the said defendants, are not bound by law to answer the same; and this the said defendants are ready to verify; wherefore, for want of sufficient indictment in this behalf, the said defendants pray judgment, and that by the court they may be dismissed and discharged from all matters in said indictment specified.

And for further causes of demurrer to said indictment, these defendants show to the court here the following, to wit:

1. Said indictment does not sufficiently state any violation by the said defendants, or any of them, of any law of the United States.

2. The matters alleged in the said indictment do not constitute an offense against the United States.

3. The acts charged in said indictment do not constitute a violation of the act of July 2, 1890 (Sherman law).

4. The said indictment is insufficient, in that it is vague, uncertain, indefinite, and argumentative.

5. The conduct of these defendants, as set out in said indictment, is within the constitutional rights of these defendants, and each of them, and any interpretation of the act of July 2, 1890 (Sherman law), which would forbid such conduct is in derogation of the rights guaranteed to these defendants under the fourth, tenth, and thirteenth amendments to the Constitution of the United States.

6. The act of July 2, 1890 (Sherman law), in so far as it is a criminal statute, is unconstitutional and void for lack of clearness and certainty.

(Signed) HOPE THOMPSON,
Attorney for said Defendants.

[File endorsement omitted.]

11 In United States District Court

[Title omitted.]

Demurrer to indictment of defendants Andrews Lumber & Mill Co.

Filed Oct. 5, 1921

The said defendants, Andrews Lumber & Mill Company, R. W. Bartelmann Company, Beck Coal and Lumber Company, California Manufacturing Company, Chicago and Riverdale Lumber Company, Commercial Sash and Door Company, The A. Dietsch Company, Barr and Collins, Vincent Dlouhy Sash and Door Company, Hartman-Sanders Company, Melrose Mill Company, William Morris & Sons Company, C. E. Peterson Company, Philip Rinn Company, South Side Interior Finish Company, Chicago Sash, Door and Blind Manufacturing Company, Standard Sash and Door
12 Company, Union Interior Finish Company, Von Platen and Dick Company, W. A. Irvine, R. W. Bartelmann, Peter Beck, Frank Bartuska, E. S. Gamble, G. H. Dekker, G. C. DeSwarte, Arthur Dietsch, Frank S. Collins, Theodore Kartheiser, P. J. Weidner, Louis C. Haring, Harry F. Morris, John Westberg, George P. Rinn, August Newquist, Ewald Dierssen, John Algot Olson, Frederick Werkmeister, T. E. Reynolds, H. D. Traeger, and James A. Dick, and each of them in their own proper persons, and by Robert W. Childs, their attorney, now come, and, having heard the said indictment read, say that the said indictment and the matters therein contained in manner and form as the same are therein stated and set forth are not sufficient in law, and that they, the said defendants, are not bound by law to answer the same, and this the said defendants are ready to verify.

Wherefore, for want of sufficient indictment in that behalf, the defendants, and each of them, pray judgment separately and that by the court they may be dismissed and discharged from said premises in said indictment with like effect as if this demurrer were separately filed and presented as to said indictment.

And for further grounds of demurrer said defendants show here to the court the following, to wit:

1. The indictment does not sufficiently state or aver, or by sufficient averment show any violation by these defendants of the statute of the United States therein referred to.

2. Said indictment does not sufficiently state or aver, or by sufficient averment charge any combination or conspiracy in restraint of trade or commerce among the several States within the meaning

of the act of Congress approved July 2, 1890, and entitled "An act to protect trade and commerce against unlawful restraints and monopolies."

3. Said indictment does not sufficiently aver or charge and violation of the said act of Congress approved July 2, 1890.

4. Said indictment is insufficient because of repugnancy, uncertainty, and ambiguity.

5. Said indictment is insufficient because the same does not aver or show in what particular the acts of the defendants, or any of them, affected interstate commerce.

6. Said indictment is insufficient because the same does not aver or set forth facts showing that the acts which were to be done or which were done could work undue restraint upon interstate commerce.

7. Said indictment is insufficient because the same does
13 not specify facts which show that the acts intended or committed by the defendants, or any of them, could work any unreasonable restraint upon interstate commerce.

8. Said indictment is insufficient in that the allegations as to the manner in which interstate commerce was to be and was restrained by the defendants failed to show how interstate commerce was to be unduly or unreasonably restrained.

9. Said indictment is vague, uncertain, and indefinite in that the averments thereof do not sufficiently set forth the alleged offense therein charged, or the supposed acts and things constituting the same, with the necessary clearness and certainty to appraise the defendants of the offense with which they are charged therein.

GOOD, CHILDS, BOBB & WESCOTT,

Attorney for Andrews Lumber & Mill Company, R. W. Bartelmann Company, Beck Coal & Lumber Company, California Manufacturing Company, Chicago and Riverdale Lumber Commercial Sash and Door Company, The A. Dietsch Company, Barr and Collins, Vincent Dlouhy Sash and Door Company, Hartman-Sanders Company, Melrose Mill Company, William Morris & Sons Company, C. E. Peterson Company, Philip Rinn Company, South Side Interior Finish Company, Chicago Sash, Door & Blind Manufacturing Standard Sash and Door Company, Union Interior Finish Company, Von Platen and Dick Company, W. A. Irvine, R. W. Bartelmann, Peter Beck, Frank Bartuska, E. S. Gamble, G. H. Dekker, G. C. DeSwarte, Arthur Dietsch, Frank S. Collins, Theodore Kartheiser, P. J. Weidner, Louis C. Haring, Harry F. Morris, John Westberg, George P. Rinn, August Newquist, Ewald Dierssen, John Algot Olson, Frederick Werkmeister, T. E. Reynolds, H. D. Traeger, and James A. Dick.

[File endorsement omitted.]

14 In the United States District Court

[Title omitted.]

Order overruling demurrers

Oct. 17, 1921

Came the parties by their attorneys, and the court having considered and being now fully advised in the premises, overrules the demurrers of the defendants to the indictment filed herein against them, to which ruling of the court said defendants by their attorneys duly except.

15 In United States District Court

[Title omitted.]

Order continuing cause

Oct. 17, 1921

Comes the United States by United States attorney, come also the defendants Andrews Lumber & Mill Co., R. W. Bartelmann Co., Beck Coal & Lumber Co., California Mfg. Co., Chicago & Riverdale Lumber Co., Commercial Sash & Door Co., The A. Dietsch Co., Barr & Collins, Vincent Dloughy Sash & Door Co., Hartman-Sanders Co., Melrose Mill Co., William Morris & Sons Co., Nollau & Wolff Mfg. Co., C. E. Peterson Co., Philip Rinn Co., South Side Interior Finish Co., Chicago Sash, Door & Blind Mfg. Co., Standard Sash & Door Co., Union Interior Finish Co., Von Platen & Dick Co., Hardwood Products Co., W. A. Irvine, R. W. Bartelmann, Peter Beck, Frank Bartuska, E. S. Gamble, F. H. Dekker, G. C. DeSwarte, Arthur Dietsch, Frank S. Collins, Theodore Kartheiser, P. J. Weidner, Louis Haring, Harry F. Moris, Arthur Root, John Westberg, George P. Rinn, August Newquist, Ewald Dierson, John Algot Olson, Frederick Werkmeister, T. E. Reynolds, H. D. Traeger, James A. Dick, E. D. Beals, William F. Brims, Stanley Muszalski, B. J. C. Wittman, Anton Sommers, James Smith, James B. Fox, F. C. Bromley, Joseph Dusek, John Loris, Thomas F. Flynn, W. G. Schradt, William C. White, Daniel J. Ryan, Joseph Veltman, Charles Wright, Thomas Church, Harry Jensen, D. H. Doyle, A. C. Wehrwein, Frank E. Doherty, William J. Scown, Frank M. Stressenrueter, T. J. McGimsie, in their own proper persons, and said defendants being arraigned upon the indictment filed herein against them pleads not guilty thereto, whereupon it is ordered by the court that this cause be continued to December 5, A. D. 1921, at ten o'clock in the morning, for trial.

16 In United States District Court

[Title omitted.]

Verdict and order granting motion for new trial

June 30, 1923

This being the day and hour to which the further trial of this cause was on yesterday continued, come again the parties by their attorneys and the defendants in their own proper persons, come also the jury who were duly elected, empaneled, and sworn herein as aforesaid, and after hearing the arguments for the defendants and the plaintiffs, and the jury being fully instructed retire to their room with a sworn bailiff to consider of their verdict and afterwards return into court to render their verdict and upon their oath do say: "We the jury find the following defendants, California Manufacturing Company, Frank Bartuska, Commercial Sash and Door Company, G. C. DeSwarte, Melrose Mill Company, Louis C. Haring, William Morris & Sons Company, Harry E. Morris, Nollau & Wolff Manufacturing Company, Arthur Root, Phillip Rinn Company, George P. Rinn, Chicago Sash and Door Company, Union Interior Finish Company, T. E. Reynolds, Frederick Workmeister, Von Platen & Dick Company, H. D. Traeger, James A. Dick, D. H. Doyle, A. C. Wehrwein, Frank E. Doherty, William J. Scown, Frank M. Stressenreuter, William F. Brime, William C. White, Daniel J. Ryan, Thomas F. Flynn, W. G. Schardt, Joseph Veltman, Charles Wright, Thomas Church, Harry Jensen, Stanley Muszalski, B. J. C. Wittman, Anton Sommers, James Smith, Joseph B. Fox, F. C. Bromley, guilty as charged in the indictment," and thereupon on motion of the defendants that the jury be polled the clerk inquired of
17 each juror, "Was this and is this now your verdict," to which inquiry each juror and all the jurors replied in the affirmative, whereupon the defendants by their attorneys enter this motion for a new trial herein, and the hearing of said motion is continued until July 14, A. D. 1924, at ten o'clock in the morning.

It is further ordered that a new trial be granted as to D. H. Doyle, A. C. Wehwein, Frank E. Doherty, William J. Scown, and Frank M. Stressenreuter, and on motion of the United States attorney this cause is dismissed as as to each of the defendants D. H. Doyle, A. C. Wehwein, Frank E. Doherty, William J. Scown, and Frank M. Stressenreuther.

In United States District Court

[Title omitted.]

Defendants' motion for a directed verdict

Filed June 21, 1923

Now come the defendants, Harry Jensen, Joseph Dusek, John Loris, Joseph B. Fox, Stanley Muszalski, Anton Sommers, James Smith, B. J. G. Wittman, F. C. Bromley, Thomas Church, Thomas F. Flynn, Daniel J. Ryan, Joseph Veltman, William G. Schardt, William C. White, and William Brims, by Hope Thompson, their attorney, and at the close of the Government's case, move the court to instruct the jury to find said Harry Jensen Joseph Dusek, John Loris, Joseph B. Fox, Stanley Muszalski, Anton Sommers, James Smith, B. J. G. Wittman, F. C. Bromley, Thomas Church, Thomas F. Flynn, Daniel J. Ryan, Joseph Veltman, William G. Schardt, William C. White, and William Brims, not guilty.

HOPE THOMPSON,
Attorney for said defendants.

[File indorsement omitted.]

18 In United States District Court

[Title omitted.]

Order denying motions for a directed verdict

June 22, 1923

This cause coming on to be heard on the defendant's motion for a directed verdict and the court having heard the arguments of counsel and being fully advised in the premises, overrules and denies said motion to which order of the court the defendants by their attorneys duly excepts.

It is further ordered that cause be continued to June 23, A. D. 1924, for trial.

19 In the United States District Court

[Title omitted.]

Order denying motions for a directed verdict

June 28, 1923

This cause coming on to be heard on the defendants motions for a directed verdict to be considered at the close of all the testimony, and the court being fully advised in the premises, overrules and denies said motions, to which order of the court the defendants, by their attorneys, duly excepts.

In United States District Court

[Title omitted.]

Motion for new trial by defendants Philip Rinn Co., Union Interior Finish Co., William Morris & Sons Co., George P. Rinn, Thomas E. Reynolds, and Harry F. Morris

Filed Sept. 22, 1923

Come now the above-named defendants, by their counsel, Robert W. Childs and Albert Fink, and move the court to vacate and
20 set aside the verdict of guilty as to said defendants in the above-entitled cause and to grant them a new trial therein for the following reasons:

1. Because the court erred, at the conclusion of all the evidence offered by the United States, in refusing to grant the motion to instruct the jury to find defendants not guilty.

2. Because the court erred, at the conclusion of all the evidence in the case, in refusing to grant the motion to instruct the jury to find the defendants not guilty.

3. Because the evidence in the case does not prove or tend to prove the defendants were guilty of the offense charged in the indictment.

4. Because the verdict of the jury is not supported by the evidence in the case.

5. Because the verdict is against law.

6. Because the evidence introduced herein does not prove or tend to prove that defendants were members of the alleged conspiracy charged in the indictment.

7. Because there was no proof of the corpus delicti of the conspiracy charged.

8. Because the court erred in sustaining the objection of the prosecution to the following questions asked of the witness Hooper upon his cross-examination:

"Q. You know how those men stood with reference to the proposed change in article 3, don't you?

"A. I do.

"Q. How did they stand?"—

when the witness, by his direct examination, had testified as to what occurred in the meetings of the millmen's association, and as to what had been said by various members of the association with reference to the change in section 3 of article 3.

9. Because the court erred in excluding from the evidence the cases of Paine Lumber Co. v. Neal, in 244 U. S. 549, and Bossert v. Dhuy, in 117 N. E. 582, when the witness Brims had testified, upon his cross-examination by the prosecution, that Mr. Ryan had read excerpts from these cases at the meeting of the joint arbitration board, where the final form of section 3 of article 3 was agreed upon, and when he had further testified upon his cross-examination by the

millmen defendants that he had been influenced in his judgment by what had been read to him, and when the attorney for the United States had said in the presence and hearing of the jury that the cases held just the contrary from the way Brims stated they held.

10. Because the court erred in overruling and denying de-
21 fendants' motion to withdraw a juror and discharge the bal-
ance of the panel from further consideration of the case at the close of the testimony of the defendant Doyle, when it appeared that since his indictment the defendant Doyle, in company with his attorney, had had two conferences with the attorneys for the prosecution, in which he had made a full and complete statement to them of what his testimony would be, and when it further appeared that the defendant Doyle had supplied the only evidence of purpose upon the part of anyone to bring about a condition under which the millmen might be benefited, and when it further appeared that the defendant Doyle had set during the trial on the side of the defense and, under pretense of being a bona fide defendant had participated in the exercise of peremptory challenges, examination of witnesses, and general conduct and counsel of the defense, and when it further appeared, in view of the time, manner, and circumstances under which the testimony of Doyle was given, that either he or his attorney had some secret arrangement with the prosecution by which Doyle and his associate co-contractors were to be protected from any consequences of a verdict of guilty, which arrangement has since "ripened into glad fruition."

11. Because the court erred in sustaining the objection of the prosecution to the following question asked of the defendants Thomas E. Reynolds and George P. Rinn:

"Q. What was your mental attitude towards the change of article
3 when Mr. Brims was insisting upon it?"

12. Because the court erred in refusing to instruct the jury that—

(1) If the millmen were guilty, the defendant Doyle, according to his own testimony, was an accomplice, and the testimony of an accomplice should be viewed with caution unless corroborated.

(2) It was necessary that the jury find a criminal intent before they could convict.

(3) The jury could not convict for a different conspiracy than the one described in the indictment.

(4) The jury could not convict unless they found a purpose or intent to keep out of the Chicago market building material manufactured in States other than Illinois.

(5) The known effect of certain acts is not necessarily conclusive evidence of the purpose with which such acts are done.

(6) Only such contracts and combinations are within the prohibi-
tion of the Sherman Act as by reason of intent or the inherent
22 nature of the contemplated acts, prejudice the public interests by unduly restricting competition or unduly obstructing the course of trade.

(7) If the millmen's committee in good faith, in order to avoid tying up the industry in Chicago, offered to recommend to their association the trade discount which the contractors were seeking, if the contractors' committee on their part would accept article 3 as then demanded by the labor union, the labor committee did not violate any of the provisions of the Sherman Act.

(8) Workmen are under no legal obligation to work on any kind of material. If they deem it to their interest to refuse to work on nonunion-made material, they have a legal right to do so. The mere fact that such material may have been made in some other State does not render such refusal unlawful, nor in violation of the Sherman Act.

13. Because the court erred in instructing the jury that—

(1) It was not necessary that the Government prove the millmen and labor defendants came to an understanding as to their course of conduct.

(2) If the effect of the conduct was to restrain interstate commerce, this was sufficient and the statute was violated.

(3) Effect was conclusive evidence of purpose or intent.

ROBT. W. CHILDS,
ALBERT FINK,
Attorneys for defendants Rinn, Morris and Reynolds.

[File endorsement omitted.]

23 In United States District Court

[Title omitted.]

Order continuing cause

July 14, 1923

This cause coming on to be heard on the motion of the defendants for a new trial, and this cause is continued until August 4, A. D. 1923, for hearing on said motion.

In United States District Court

[Title omitted.]

Order continuing cause

Aug. 4, 1923

This cause coming on to be heard on the motion of the defendants for a new trial, and this cause is continued until September 22, A. D. 1923, for hearing on said motion.

24 In United States District Court

[Title omitted.]

Motion in arrest of judgment

Filed Oct. 19, 1923

Now, on this 22nd day of September, 1923, come William Brims, Stanley Muszalski, B. J. G. Wittman, Anton Somers, James Smith, Joseph B. Fox, F. C. Bromley, Thomas F. Flynn, W. G. Schardt, William C. White, Daniel J. Ryan, Joseph Veltman, Charles Wright, Thomas Church, and Harry Jensen, defendants in the above-entitled cause, by their counsel, Hope Thompson, and each of said defendants for himself moves that the judgment in the above-entitled cause be arrested as to him, the said defendant, and each of them, upon the following grounds, and for the following reasons:

1. The matters and things alleged in the indictment do not constitute an offense against the United States.

2. The matters and things alleged in the indictment do not constitute a violation of the Sherman Act.

3. The verdict of the jury is not supported by any evidence in the case.

4. The evidence in the case does not prove, or tend to prove, that the said defendant, or either of them, were guilty of any offense against the United States.

5. A judgment against these defendants, or either of them, on the record, in this case, deprives such defendants of fundamental rights guaranteed to them by the fourth, and the tenth, and the thirteenth amendments to the Constitution of the United States.

6. Any interpretation of the Sherman Act which permits the rendition of a judgment in this case against these defendants, or either of them, is contrary to, and in violation of the Constitution of the United States.

25 7. The United States has no constitutional power or authority to render judgment upon the record in this case against these defendants, or either of them.

HOPE THOMPSON,
Attorney for said Defendants.

[File endorsement omitted.]

In United States District Court

[Title omitted.]

Motion in arrest of judgment

Filed Sept. 22, 1923

Come now, in this day of 1923, the said Cali-
28 fornia Manufacturing Co., Commercial Sash & Door Co., Von Platen & Dick Co., Chicago Sash, Door & Blind Manufacturing Co., Melrose Mill Co., Wm. Morris & Sons Co., Standard Sash and Door Co., Union Interior Finish Co., Phillip Rinn Co., Frank

Bartuska, C. C. De Swarte, James A. Dick, Ewald Dierssen, Louis C. Haring, Harry F. Morris, T. E. Reynolds, George P. Rinn, H. D. Traever, and Frederick Werkmeister, in the above-entitled cause, by their counsel Robert W. Childs and Albert Fink, and jointly and severally move that the judgment in the above-entitled cause be arrested as to them and each of them, for the following reasons:

A

The court is without jurisdiction to pronounce sentence herein, because:

I. The indictment fails to state any offense against the laws of the United States, in that:

(a) The indictment purports to charge a conspiracy, but there is no allegation of criminal intent.

(b) There is no sufficient description of the offense sought to be charged as to appraise defendants with reasonable certainty, of what they stand accused.

II. There was no evidence to sustain the essential allegations of the indictment.

III. The court is without cognizance of the class of cases to which belongs the one at bar, for, as shown by the evidence, neither by reason of intent or the inherent nature of the contemplated acts, did the conduct of the defendants tend to unduly restrict competition or unduly obstruct trade.

IV. There was no relation between the conduct proven and any rule of law imposing criminal liability.

V. To pronounce sentence upon the evidence adduced herein would be to pronounce judgment upon a matter not in substance and effect within the issues as framed by the indictment and the plea of not guilty.

B

To pronounce judgment against defendants upon the evidenced adduced herein would be in substance and effect to:

I. Deprive defendants of the guaranty of the 6th amendment to the Constitution of the United States, providing that in all criminal prosecutions, the accused shall enjoy the right to be informed of the nature and cause of the accusation.

27 II. Deprive defendants of their liberty to make those ordinary civil contracts which only indirectly and remotely effect interstate trade and commerce in contravention of the 5th amendment to the Constitution of the United States, providing that no man shall be deprived of his liberty without due process of law.

III. Deprive defendants of the guaranty of the 10th amendment to the Constitution of the United States providing that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people.

IV. Deprive defendants of the guaranty of the 13th amendment to the Constitution of the United States, providing that neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.

And the protection of the foregoing provisions of the Constitution of the United States is hereby expressly claimed.

ROBT. W. CHILDS,
ALBERT FINK,
Attorneys for Moving Defendants.

[File endorsement omitted.]

28 In United States District Court

[Title omitted.]

Sentence and judgment

Sept. 22, 1923

This cause coming on to be heard on the motion of the defendants for a new trial herein come the parties by their attorneys, and the court having heard the arguments of counsel and being fully advised in the premises overrules and denies said motion to which order of the court the defendants by their attorneys duly excepts and enters motion in arrest of judgment, and this cause coming on to be heard on said motion in arrest of judgment, the court having heard the arguments of counsel and being fully advised in the premises overrules said motion in arrest of judgment, to which order of the court the said defendants by their attorneys duly excepts, and said
29 defendants having been adjudged guilty by a jury in due form of law as charged in the indictment filed herein against them, and the defendants being asked by the court if they have anything to say why the sentence and judgment of the court should not now be pronounced upon them, and showing no good and sufficient reasons why sentence and judgment should not be pronounced, it is therefore considered and ordered by the court and is the sentence and judgment of the court upon the verdict of guilty so rendered by the jury as aforesaid that the defendants, California Manufacturing Company, Frank Bartuska, Commercial Sash and Door Company, G. C. DeSwarte, Melrose Mill Company, Louis C. Haring, William Morris & Sons Company, Harry Morris, Nollau & Wolff Manufacturing Company, Arthur Root, Phillip Rinn Company, George P. Rinn, Chicago Sash Door & Blind Mfg. Company, Ewald Dierssen Standard Sash & Door Company, Union Interior Finish Company, T. E. Reynolds, Frederick Werkmeister, Von Platen & Dick Company, H. D. Traeger, James A. Dick, William F. Brims, William C. White, Daniel J. Ryan, Thomas F. Flynn, W. G. Schardt, Joseph

Veltman, Charles Wright, Thomas Church, Harry Jensen, Stanley Muszalski, B. J. G. Wittman, Anton Sommers, James Smith, Joseph B. Fox, F. C. Bromley, forfeit and pay to the United States a fine in the sum of California Manufacturing Company, $2,500.00; Frank Bartuska, $500.00; Commercial Sash and Door Company, $2,500.00; G. C. DeSwarte, $500.00; Melrose Mill Company, $2,500.00; Louis C. Haring, $500.00; William Morris & Sons Company, $5,000.00; Harry Morris, $2,500.00; Nollau & Wolff Manufacturing Company, $2,500.00; Arthur Root, $500.00; Phillip Rinn Company, $5,000.00; George P. Rinn, $2,500.00; Chicago Sash Door & Blind Mfg. Company, $2,500.00; Ewald Dierssen, $500.00; Standard Sash & Door Company, $2,500.00; Union Interior Finish Company, $5,000.00; T. E. Reynolds, $2,500.00; Frederick Werkmeister, $500.00; Von Platen & Dick Company, $2,500.00; H. D. Traeger, $500.00; James A. Dick, $500.00; William F. Brims, $2,500.00; William C. White, $100.00; Daniel J. Ryan, $100.00; Thomas F. Flynn, $100.00; W. G. Schardt, $2,500.00; Joseph Veltman, $2,500.00; Charles Wright, $2,500.00; Thomas Church, $2,500.00; Harry Jensen, $1,000.00; Stanley Muszalski, $50.00; B. J. G. Wittman, $50.00; Anton Sommers, $50.00; James Smith, $50.00; Joseph B. Fox, $50.00; F. C. Bromley, $250.00; besides the costs in this behalf expended and that execution issue therefor, and that costs be pro rated, and that judgment be stayed to October 20, 1923.

30 In United States District Court

[Title omitted.]

Bill of exceptions

Filed Mar. 7, 1924

Be it remembered that heretofore, to wit, on the 17th day of October, 1921, being one of the days of said term of said court, before the Honorable George A. Carpenter, one of the judges of said court, this cause came on for argument on the demurrers to the indictment of the defendants therein, which demurrers say, as appears more fully from the record herein, that the indictment did not sufficiently advise the defendants of what they stood charged. Upon overruling the demurrer, the court, Judge Carpenter presiding, said:

"So far as the indictment is concerned, the situation resolves itself down to this one proposition:

"There is a charge here that the manufacturing defendants, by certain promises of reward, induced the labor organizations to do certain things, which resulted in an interference with interstate commerce. There is a further charge that the Contractors' Association conspired with both to bring about the same result.

"Now, the result was wrong. While each act, if done independently and individually, would have been harmless, the combination of the three, in my judgment, makes a violation of the Sherman Act.

"I am not going into the detail of the indictment. There is no question but what the defendants have been fully advised of
31 what they have to meet on their day of trial. It is my opinion that the charge here, the conspiracy, inducing the organizations of labor to do certain things—is the real crux of this case, and that, in my opinion, is a violation of the Sherman Act, and that conspiracy will have to be proved on the trial or the case will be taken from the jury."

Be it further remembered that heretofore, to wit, on the 12th day of June, 1923, being one of the days of the June A. D. 1923 term of said court, before the Honorable Adam Cliffe, one of the judges of said court, and a jury, this cause came on for trial upon the indictment heretofore found herein, the defendants having entered pleas of not guilty.

Appearances of counsel:

Edwin A. Olsen, United States attorney;
R. E. Milroy, assistant United States attorney;
Thomas J. Howe, special Assistant Attorney General;
James A. Fowler, special Assistant Attorney General, Knoxville, Tenn.;
Roger Shale, special Assistant Attorney General, Washington, D. C.;
appeared on behalf of the Government.
Mr. Robert W. Childs (Good, Childs, Bobb & Wescott);
Mr. Albert Fink;
Mr. Fletcher Dobyns (Dent, Dobyn & Freeman);
Messrs. Wallace Streeter and William C. Asay (Lewis, Folsom, Asay & Streeter);
Mr. Hope Thompson;
appearing for union defendants.
Mr. William McKinley;
Archibald Cattell;
Robert W. Dunn;
appearing on behalf of certain defendants.

Argument of counsel

Opening statement of Mr. Thomas J. Howe

In his opening statement to the jury, Mr. Thomas J. Howe, special assistant to the Attorney General, in defining the precise issue to be submitted to the jury, said:

"During the negotiations for the making of this new agreement, the evidence will show, and I think show conclusively, that the millmen's association, through its labor committee, Harry Morris, George P. Rinn, and Thomas Reynolds, made advances to the
32 Contractors' Association and to the Labor Association, to have inserted in the new agreement about to be made, a changed article 3, to read as follows:

"'There shall be no restriction against the use of any manufactured material, except nonunion and prison-made.'

"The evidence will show that this material was referred to, by this labor committee, by the president and arbitration board of the union, as outside material. The agreement itself had the word 'non-union' inserted and we will show to you gentlemen, that all of these meetings together was to eliminate from the Chicago market not union-made material, but materials made outside of Chicago."

Mr. Childs, attorney for defendants, Standard Sash & Door Company, and John Algot Olson, its chief executive officer and agent, moved the court to continue the case as to the said defendants on the ground that Mr. Olson was and had been ill for more than a year and was unable to attend court, and in support of said motion presented a doctor's certificate in words and figures as follows, to wit:

Doctor's certificate

"CHICAGO, ILL.,
"*March 15, 1923.*

"This is to certify that John Algot Olson, 8024 Aberdeen Street, is suffering with chronic arthritis deformans, that he is confined to his bed most of the time, and is unable to get out of his home.

"CHARLES A. STEVENS, M. D."

Which motion, on behalf of each of said defendants, the court overruled, and exceptions was then and there duly taken by their counsel.

E. E. HOOPER, called as a witness on behalf of the Government, having been first duly sworn, testified that his name is E. E. Hooper; that he lives in Chicago; that he has lived here about forty years; and that he is at the present time secretary of the Lumbermen's Mutual Casualty Company, and that in the year 1918 he was secretary of the Lumbermen's Association of Chicago; that the Lumbermen's Association of Chicago was made up of divisions, about eight, running from A to H, which covered practically all people dealing in wood and lumber; that Division A was dealing strictly in retail yards, pine yards; that Division B was hardwood yards; that Division C was hardwood wholesalers; that Division D was yellow pine wholesalers; that Division E was manu-
33 facturers; that Division G was millmen; that Division F was division men who sold lumber on commission from manufacturers; that Division H were box people who handled boxes in Chicago. That the Lumber Exchange—that is, the old Lumber Exchange—was incorporated about 54 years ago by State act in Illinois; that the new organization, the consolidation of woodworkers, has been in operation for about ten or twelve years; that it is a corporation, and that the name is Lumbermen's Association of Chicago. That the several divisions had no connection with each other, except on a general legislative proposition; that each division managed its own business; that the chairman of each division was a committee called a trade committee, and if they had any grievance where one division had infringed upon the rights of the others they would bring

it up before the board of directors. That was the only connection between them, except that each division had a contractor on the board of general association. Division G was independent of the other divisions; it had a lumber log of the Lumbermen's Association, giving the entire membership and also the membership of each division. Witness shown a booklet, and says that it is the log for 1918, and shows the organization for that year. Division G had the following committees: Executive committee, labor committee, membership committee, and trade relations committee. The members of the executive comittee for 1918 were John Algot Olson, chairman; E. W. Dierssen, H. F. Morris, T. E. Reynolds, and John Westberg; the committee acted like a board of directors and had general charge of the affairs of that division. The labor committee consisted of T. E. Reynolds, chairman; H. F. Morris, and George P. Rinn, who took charge of all labor disputes and disputes with laborers. The labor contracts were negotiated with inside hands of the Carpenters and Joiners' Union since about 1900 or 1910 or 1911. There was also a membership committee, a trade relations committee, the duties of the latter being to take up anything relating to trade matters of interest to the division. The members of the trade relations committee in 1918 were Arthur Root, chairman, G. C. DeSwarte, W. S. Lockwood, R. J. Dickerson, and Fred Werkmeister. The witness then read to the jury a list of 37 names of companies who were members of Division G in 1918, which included all the de-
34 fendant corporations except the Melrose Mill Co. That the men who were members of the different committees began their duties after the annual meeting, about the fourth Tuesday in January; that they began to function about the first of February. The indictment in this case was returned in September, 1921; that is, the first indictment. Witness was shown log for 1919, and stated that the membership of the committees for that year was as follows: Executive committee—T. E. Reynolds, chairman; F. J. Bartuska, H. F. Morris, F. J. Heitman, Geo. P. Rinn. Labor committee—T. E. Reynolds, chairman; H. F. Morris, and George F. Rinn. Membership committee—John Algot Olson, chairman; H. D. Traeger, and John Westberg. Trade relations committee—Arthur Root, chairman; G. C. DeSwarte, R. J. Dickerson, W. S. Lockwood, and Fred Workmeister. For 1920, as follows: Executive committee—L. C. Haring, chairman; G. H. Dekker, J. A. Dick, John Algot Olson, and Arthur Root. Labor committee—George P. Rinn, chairman; H. F. Morris, and T. E. Reynolds. Membership committee—John Algot Olson, chairman; H. D. Traeger, and R. J. Dickerson. Trade relations committee—Arthur Root, chairman; Frank S. Collins, G. C. DeSwarte, W. S. Lockwood, and Fred Workmeister. List of members of Division G, as shown by the lumbermen's log, 1919, read into the record, which included thirty-four firms, and in which were included all the defendant corporations. List of members of Divi-

sion G, as shown by the lumbermen's log, 1920, read into the record, which included thirty-six firms, and in which were included all the defendant corporations. That the members of this association were engaged in the sash, door, and blind and interior trim business; some made china cases, some made sash, doors, and blinds, and some handled lumber as well as millwork. That he did not know what per cent of the inside trim work that was installed in Chicago was manufactured or handled by the members of this association. He is familiar with all the concerns, and that there were about fifteen or twenty outside of his organization that did that kind of work, and he knew nothing as to the extent of their business. That the big manufacturers of this material who were members of the association were the Union Interior Finish Company, Von Platen & Dick, C. E. Peterson, Chicago Sash & Door Company, Nollau & Wolff, Philip Rinn, William Morris & Sons Company, and Barr & Collins.
35 He did not know if some of them manufactured all the material they sold, except what he heard. That the members of Division G met two or three times a year, and sometime more often; there were no stated meetings—all call meetings whenever they had some business to transact.

Notices would be sent out for the meetings or we would telephone. If it was on a labor proposition he would get directions from Mr. Reynolds; if it was an executive matter he would get it from the chairman of the executive committee. Minutes were kept of these meetings; they were dictated to a stenographer who wrote them up under his direction. Minutes were correctly kept as far as possible. A number of typewritten pages identified as "Millmen's Association minutes of meetings" and that they contained the minutes of the meetings of Division G from Oct. 18, 1917, to Nov. 30, 1920. Turning to the minutes of March 5, 1918, he states they were drawn under his direction and are the minutes of things that occurred there at that time and are signed by him in his handwriting, as secretary.

Mr. FOWLER. We wish to introduce those particular minutes as Government's Exhibit 1.

Objection by counsel on behalf of union defendants as not being prepared under their direction and having nothing to do as far as they are concerned.

Objection by counsel on behalf of the contractor defendants; they know nothing about them and had nothing to do with them.

Objection on behalf of Defendant Beals.

Further objection on behalf of union defendants by counsel for the reason that this indictment charges specific conspiracy, a very specific charge. If it can be proved at all it can be readily proved by a very few witnesses; I mean that part of the charge, and manifestly it is not competent as to us unless it shall be shown to be a conspiracy in which we were parties and did act in furtherance of it. The Government in this situation ought not to be permitted

to fill this case with matters of this kind before it has gone into the element of conspiracy at all.

The COURT (to Mr. Fowler). What do you say about that?

Mr. FOWLER. Yes; it is to be a part of our evidence.

36 The COURT. You are now introducing the minutes of March 5, 1918, of the Millmen's Association.

Objections overruled and exception taken.

Mr. THOMPSON. I assume it is understood that they will be stricken out if not properly connected?

Mr. FOWLER. Certainly.

The COURT. Oh, surely. Proceed.

Minutes introduced as Government's Exhibit 1.

Mr. Shale, on behalf of the Government, reads part of Exhibit 1. Government Exhibit 1 is dated Chicago, March 5, 1918; it is a meeting, according to the notation at the top, meeting of Division G, Lumbermen's Association of Chicago, held in room 404, Lumber Exchange Bldg., on Tuesday, March 5, 1918, eighteen members being present. Mr. T. E. Reynolds made a report of the labor committee. Met with a committee from the carpenter's union, who had presented a contract calling for wage of 55 cents per hour for the first year and 65 cents per hour for the next two years. All working conditions of former contract to remain the same, except as applies to foremen. After the matter was discussed it was the sense of the meeting that it be placed in hands of the labor committee without any recommendation, and with the request that they make the best contract possible. After that meeting Mr. Hooper sent a letter to the different members of Division G, which letter is dated March 22, 1918, addressed to members of Division G, and signed by Hooper, which letter the Government offers as Government Exhibit 2.

Same objection on behalf of union defendants.

Same objection on behalf of Defendant Beals.

Objection considered in as to all defendants unless withdrawn.

Witness (Hooper) reads Government's Exhibit 2. "This is to advise you that the contract with your inside hands is now under negotiation, but will not be consummated until the signing of the agreement of the Carpenter Contractors' Association with the outside carpenters. Their agreements expires May 31, 1918. There will be no cessation of work pending the execution of this agreement. Therefore, do not be disturbed if the agreement with our union is not signed by April 1st. By order of the labor committee.

37 Yours truly, E. E. Hooper, secretary." Witness does not remember whether or not he formulated that letter; that it was formulated at the direction of the labor committee. That on March 29, 1918, he sent out another letter to the members of Division G, which document was marked "Government Exhibit 3." Witness (Mr. Hooper) reads Government's Exhibit 3 to the jury.

"Division G: Your labor committee has found it necessary to make a change in the instructions sent you under date of March 22nd. You are advised that beginning with April 1st you shall operate your plant eight hours a day between the hours of 8 a. m. and 5 p. m. at the minimum rate of 50 cents per hour. This arrangement to continue until such time as this committee consummates agreement with the carpenters' district council for ensuing three years. By order of the labor committee. Yours very truly, Hooper, secretary." Ordered by labor committee to be sent out. The Government offers the minutes of April 19, 1918, as Government Exhibit 4, whereupon document referred to was marked as requested, "Government's Exhibit 4," said document dated April 19, 1918, and read by Mr. Shale. "Meeting of Division G, Lumbermen's Association of Chicago, was held in Room 404, Lumber Exchange Building, on Friday, April 19, 1918, twenty members being present. Meeting was called to order by Mr. John Algot Olson, chairman; E. E. Hooper, secretary. Minutes of the last meeting approved without being read. The labor committee, through Mr. H. F. Morris, made a report of the contract they had entered into with the carpenters' union. After the matter was thoroughly discussed the following resolution was offered by Mr. Diersen, seconded by Mr. Stevenson, and unanimously carried: "Resolved, That we approve the report of the labor committee and tender them a vote of thanks for the splendid manner in which they have handled the matter." The question of having all old goods stamped with the union label was discussed, and it developed that a great many goods already purchased from the outside would necessitate some arrangement by which they could be used. The following resolution was offered by Mr. Dickerson, seconded and carried: "Resolved, That each member furnish the
38 labor committee with lists of nonunion mill work purchased for unfinished orders at date of April 18, 1918, stating dates when orders were placed and description, in a general way, of what orders consisted of." The following resolution was offered by Mr. Stevenson, seconded by Mr. Lockwood, and carried: "Resolved, That the labor committee send out a letter to members of the division explaining how they should report orders for mill work purchased from the outside; also how they should report stocks on hand." There being no further business, the meeting adjourned." Signed E. E. Cooper, secretary. Witness (Mr. Hooper) identifies a document bearing date of April 18, 1918, as the contract that was reported to the meeting, which document is offered by the Government and marked "Government Exhibit 5."

Government Exhibit # 5 is then read by Mr. Shale, which is the agreement between Division G, etc., and the Chicago district council, which is as follows:

(Reading:) "Agreement entered into this 18th day of April, 1918, between Division G, members of the United Employes Association of Wood Industries, manufacturers of sash, doors, interior finish, and cabinet work in general, also store, office, and bar fixtures,

parties of the first part, and the undersigned representatives of the Chicago District Council, United Brotherhood of Carpenters and Joiners of America, parties of the second part.

"Article I. The parties of the first part agree to hire only such woodworkers who work in the factory, including foremen, who are members in good standing of the United Brotherhood of Carpenters and Joiners of America, who carry the current quarterly working card issued by the above-named organization, reserving the right to hire whomsoever they please.

"Article II. It is agreed that eight hours shall constitute a day's work between the hours of 8.00 a. m. and 5.00 p. m., with one hour or less for noon. On Saturday four hours shall constitute a day's work, between the hours of 8.00 a. m. and 12.00 o'clock noon, and four hours' pay for that day during the life of this agreement. It is agreed that all work done on Saturday after twelve o'clock noon shall be paid for at the rate of double time.

"Article III. The minimum scale of wages for journeymen
39 working in the mills or factories of the parties of the first part shall be fifty cents per hour from April 1st, 1918, to May 31st, inclusive, 1919, and fifty-five cents per hour from June 1st, 1919, to May 31st, inclusive, 1920, and sixty cents per hour from June 1st, 1920, to May 31st, inclusive, 1921. It is further agreed that all employes receiving more than the present scale of wages shall not suffer any reduction by reason of this agreement.

"Article IV. Overtime shall be paid for at the rate of time and one-half. Double time shall be paid for all work done on Sunday, New Year's Day, Decoration Day, Fourth of July, Thanksgiving Day, and Christmas Day, or days celebrated for them. No work shall be allowed under any pretense on Labor Day except by consent of both presidents.

"Article V. It is agreed that there shall be a regular pay day on Tuesday of each week, except when the regular pay day is a legal holiday, in which case pay day shall be the day before or the day after. There shall be no more than two days' pay kept back on pay day. When a man is discharged or laid off he shall be paid in full if he so requests. A strike to enforce this article shall not be considered a violation of this agreement, but parties of the first part shall be notified through the proper officers at once of any violation of this article prior to calling a strike.

"Article VI. It is agreed that the parties of the first part have one apprentice to every ten journeymen or major fraction thereof, and must sign indenture papers for the apprentice with the president and secretary of the district council, subject to such rules as will be mutually agreed upon by the parties to this agreement. Each apprentice to serve a term of four years at the following rate of wages: First year, $1.25 per day; second year, $2.00 per day; third year, $2.50 per day; fourth year, $3.00 per day, and no one shall be accepted as an apprentice under seventeen years of age or over twenty-two years of age. All apprentices shall carry the current quarterly work-

ing cards of the United Brotherhood of Carpenters and Joiners of America.

"Article VII. The parties of the first part agree that the representative of the United Brotherhood of Carpenters and Joiners of America shall have access to the mill or factory of parties of
40 the first part at any reasonable time during working hours, permission being granted upon application at the office.

"Article VIII. There shall be a steward in each mill or factory of the parties of the first part, appointed by the representative of the United Brotherhood of Carpenters and Joiners of America, and it shall be the duty of the stewards to control the working cards of the men in the said factory or shop and report all violations to the business agent of the district, or to the office of the district council. In no case shall the steward be discharged from any shop or factory because he has acted as steward and followed the working rules as prescribed in this agreement.

"Article IX. The parties of the first part shall be entitled to the use of and be furnished with the label of the United Brotherhood of Carpenters and Joiners of America, and all work manufactured by the parties of the first part must be stamped before delivery. The shop steward shall have charge of said label and be held responsible for same.

"Article X. The parties of the first part shall furnish all clamps, hand screws, and workbenches for the use of bench hands and cabinetmakers.

"Article IX. In the event of any dispute arising between the parties to this agreement, the parties of the first part, along with the representatives of the United Brotherhood of Carpenters and Joiners of America, shall endeavor to arrive at a settlement that will be satisfactory. In case no settlement is arrived at, then the parties of the first part shall appoint three members and the party of the second part another three members and the parties so selected shall appoint another seventh member of an arbitration committee within forty-eight hours after any dispute shall arise, whose decision in the matter shall be final. During the process of arbitration no strike or lockout shall be declared by either party. The decision of the arbitration committee shall take effect from the time the said committee went into session. The expense of this committee shall be borne by both parties.

"Article XII. All complaints shall be presented through the proper officers of the associations interested.

"Article XIII. It is further agreed that at least ninety days
41 prior to the expiration of this agreement it shall be open for discussion for any changes desired by either party to this agreement, and shall be signed one month prior to the expiration of this agreement.

"Article XIV. It is agreed further that all stairwork shall be done under stair shop agreement.

"Party of the first part: Thomas E. Reynolds, chairman; H. F. Morris, George P. Rinn, John Algot Olson, president; Edwin E. Hooper, secretary.

"Party of the second part: Wm. Brims, pres.; B. G. Wittmann, Anton Sommer, James Smol, S. Muszalski, Joseph B. Fox, secretary."

That because of the action taken at that meeting in April, 1918, he (Hooper) sent a letter to the members of the division, which letter is dated April 22, 1918, exact copy of which he has in his hand and which the Government offers as Government Exhibit 6, which letter is read by witness: "You are requested to send to this office a memorandum of all unshipped purchase orders for millwork of every sort. State clearly the following: Date order was placed. Date of agreed delivery. Firm from whom purchased. Is order for stock for special job? Of what does order consist? An immediate response is requested in order to enable your labor committee to intelligently handle these matters." Signed E. E. Hooper. On order of labor committee. On May 9, 1918, another letter was sent relating to the same subject to members of Division G, a copy of which is identified by witness and offered by Government as Exhibit #7, which document witness read as follows: "Chicago, May 9, 1918, Division G: Gentlemen: The millmen's committee appeared before the joint arbitration board and requested an understanding as to the material now on hand and in storage in the various mills of Chicago and vicinity, and the following resolution prevailed:

"Resolved, that the Carpenters' District Council furnish a special stamp as follows: 'O. K., Carpenters' District Council of Chicago, Cook County and Vicinity." This stamp is to be placed on all material under the following conditions:

"All contracts let or taken on material bought previous to May 1, 1918. After all material is stamped by the steward of the shop the stamp shall be returned to the Carpenters' District Coun-
42 cil. This fully explains how outside purchases you may have on hand should be handled. Please comply with the same.

"If you have not replied to our letter of April 22d, requesting a memorandum of all unshipped purchase orders for millwork of every sort, kindly do so at once, as the information must be in this office by the end of this week. Please reply to the following questions without further delay:

"Date order was placed. Date of agreed delivery. From whom purchased. Is order for stock or for special job? What does order consist of? Your prompt attention is urgently necessary. Yours very truly, E. E. Hooper."

Witness (Hooper) says he received a good many replies to this letter, and identifies a letter dated May 14, 1918, addressed to the Lumbermen's Association of Chicago, Division G, from the California Manufacturing Company as one.

Said letter of May 14, 1918, marked "Government's Exhibit No. 8."

Identifies letter dated May 10th, addressed to the Lumbermen's Association of Chicago, Room 404, Lumber Exchange Bldg., from the Chicago & Riverdale Lumber Co., as a letter in reply, which was marked as "Government's Exhibit No. 9."

Identifies letter of May 13, addressed to the Lumbermen's Association of Chicago, from the Commercial Sash & Door Company, there being attached to it a copy of a letter addressed to Mr. Brims, president of the Carpenters' District Council, as a communication received in response to the letter heretofore read. Says that copy of the letter to Brims accompanied it.

Objection by counsel for union defendants.

The COURT. Yes; the answer is not responsive. It was in response to the letter you sent out?

WITNESS. Yes, sir.

Mr. FOWLER:

Q. Was that carbon copy of the letter addressed to Mr Brims attached to or did it accompany this letter?

A. It accompanied this letter.

Mr. FOWLER:

Q. I don't understand.

A. That letter must have went to Mr. Brims with the letter I read.

The COURT:

Q. Did this carbon copy accompany that letter?

43 A. Yes, sir.

The COURT:

Q. As part of the communication?

A. Yes, sir.

Government offers the communication and also the exhibit attached as its Exhibit No. 10. Document referred to was marked "Government's Exhibit No. 10."

Identifies letter dated March 8, 1918, addressed to the Lumbermen's Association from the Commercial Sash & Door Company, as letter received in reply to one he wrote on May 9th.

Which letter the Government offers as Exhibit No. 11, whereupon document referred to was marked, as requested, "Government's Exhibit No. 11."

That he wrote another letter on the same subject to the Commercial Sash & Door Company on Aug. 21st, and identifies a carbon copy as a copy of that letter, which carbon copy is offered as Government's Exhibit No. 12. Whereupon the document referred to was marked "Government's Exhibit No. 12."

Identifies letter addressed to the Lumbermen's Association from the Commercial Sash & Door Co., dated August 23d, as a letter he received from that concern in reply to the carbon copy that has been identified. Offered as Government Exhibit No. 13. Whereupon the document referred to was marked "Government's Exhibit No. 13."

Identifies letter dated April 24, 1918, addressed to the Lumbermen's Association, Chicago, from Hartman-Sanders Company, as a letter received in reply to his of May 9th. Government offers this as Exhibit 14. Whereupon the document referred to was marked as "Government's Exhibit No. 14."

Identifies letter dated April 24, 1918, addressed to Mr. E. E. Hooper, secretary of the Lumbermen's Association, from Morris & Sons Company, as a letter received in reply to his letter of May 9th. Which document is offered as Exhibit No. 15. Whereupon the document referred to was marked, as requested, "Government's Exhibit No. 15."

Identifies letter dated April 22, 1918, addressed to Division G, signed E. E. Hooper, secretary, with a notation on the bottom of it, as being returned. The notation was made by the South Side Interior Finish. The letter was addressed to them, and they replied on the bottom of it and returned it. Offered as Govern-
44 ment Exhibit No. 16. Whereupon the document referred to was marked as "Government's Exhibit No. 16."

Identifies letter dated May 15, 1918, addressed to the Labor Committee, Division G of Lumbermen's Association, from the Standard Sash & Door Company, as a letter received in reply to his letter of May 9, 1918. Offered as Government's Exhibit No. 17. Whereupon document referred to was marked "Government's Exhibit No. 17."

Mr. FOWLER:

Q. I show you a communication dated July 24, 1918, addressed to the Carpenters' District Council of Chicago and signed by VonPlaten & Dick Company, by H. E. Traeger, secretary, with a notation, "Copy to Lumbermen's." Did you ever have possession of that communication?

A. I guess this is a copy I received—it was sent to the Carpenters' District Council; I don't know. I have no personal recollection about it. I don't know from what file the Government got it, unless they got it out of my files; it may have been in my files. I have no personal recollection about it. That is Mr. Traegler's signature at the bottom; I don't know whether or not he is the treasurer of the VonPlaten & Dick Co. That is the last of those letters.

Offered by Government as Exhibit No. 18.

Whereupon counsel for union defendants object.

Objection overruled.

Mr. THOMPSON. Our exception is preserved as to all our objections, is that understood?

The COURT. Yes.

Mr. MCKINLEY. It will not be necessary to preserve exceptions then?

The COURT. No; exceptions will be preserved to all objections.

Whereupon document referred to was marked "Government's Exhibit No. 18."

Mr. Shale, on behalf of the Government, then reread Government's Exhibit 7 and also Government's Exhibits 8 to 18, inclusive, being answers or communications in reply to Government's Exhibit 7.

45 *Government's Exhibit 7*

CHICAGO, *May 9, 1918.*

DIVISION G.

GENTLEMEN: The millmen's committee appeared before the joint arbitration board and requested an understanding as to the material now on hand and in storage in the various mills in Chicago and vicinity and the following resolution prevailed:

Resolved, That the Carpenters' District Council furnish a special stamp as follows—"O. K. Carpenters' District Council of Chicago, Cook Co. and Vicinity"—this stamp to be placed on all material under the following conditions: All contracts let or taken or material bought previous to May 1st, 1918; after all material stamped by the steward of the shop, the stamp shall be returned to the Carpenters' District Council.

This fully explains how outside purchases you now have on hand should be handled. Please comply with same.

If you have not replied to our letter of April 22d requesting a memorandum of all unshipped purchase orders for millwork of every sort, kindly do so at once, as the information must be in this office by the end of this week. Please reply to the following questions without further delay:

Date order was placed?
Date of agreed delivery?
From whom purchased?
Is order for stock or for special job?
What does order consist of?
Your prompt attention is urgently necessary.

Yours very truly,

E. E. HOOPER, *Secretary.*

46 Government's Exhibit 8 was thereupon read to the jury, as follows:

CHICAGO, *May 14, 1918.*

LUMBERMEN'S ASSN. OF CHICAGO,
DIVISION G.

GENTLEMEN: As per your request of April 22d the following are unshipped orders on our books, the doors on which we would like to buy. Contract July 16, 1917—St. Casimir's Church, S. W. cor. 22d and Whipple. Flush doors not let—building is not far enough to get sizes. Contract Sept. 19, 1917—St. Hyacinth's R. C. Church, Wolfram St. near Lawndale Ave., 32 doors not let—building is not far enough to get sizes. One order placed April 8, 1918—date of delivery promised in four to six weeks. Purchased from

Roddis Lumber & Veneer Co. on special job. Order consists of eleven flush doors.

Yours truly,

THE CALIFORNIA MFG. CO.

Government's Exhibit 9 was thereupon read to the jury, as follows:

MAY *10th, 1918.*

LUMBERMEN'S ASSN. OF CHICAGO,
Rm. 404 Lumber Exchange Bldg., Chicago, Ill.

GENTLEMEN: We submit herewith our report of goods purchased which have not been received:

Long-Bell Lumber Co. car in transit containing yellow pine jambs, stair steps, and stair risers.

Lumber Mills Co. coast shipment in transit, car containing exterior mouldings, exterior balusters, rails, and lumber—all fir.

Long-Bell Lumber Co. two carloads of yellow pine large and small mouldings, ordered December, 1916, and January, 1917, ready for shipment as soon as can secure empty cars for loading.

McMillen Co. ordered April 2d, 35 pine and yellow pine doors to ship soon as ready.

47 Paine Lumber Co. April 16th, 1918, order 2,100 small panels sizes 16x18 up to 24x36 to ship soon as ready and 396 large panels ordered April 23d.

Rock Island Sash & Door Co., March 15th, 1918, order, ten doors four panel pine.

C. L. Isben & Co. ordered Jan. 29th, 1918, 7,000 oak and yellow pine base blocks, ship soon as ready.

C. L. Isben & Co., April 10th, order 350 birch and oak door jambs, 10,000 ft. oak base, 5,000 ft. oak base moulding, 5,000 ft. oak picture mould, 13,000 ft. birch and oak casing, 6½ M. ft. birch & oak stools, 5 M. ft. birch pict. mldg., 11 M. ft. miscellaneous oak mldgs.; January 24th, 1918, C. L. Isben Co., 5 M. ft. No. 8394 oak, 5 M. ft. 1⅜" square oak, 3 M. ft. casing, oak, 700 stair treads, oak.

C. L. Isben Co., April 2d, 1918—33 birch doors; April 30th, 1918, C. L. Isben Co., 290 birch doors, 11,500 ft. birch mldgs.; ship soon as ready.

C. L. Isben Co., February 21st, 1918, order 190 fir doors; ship as soon as ready.

In addition to the above orders, which are all orders placed for stock, we have, of course, a large quantity of millwork on hand in our warehouse. We have made no purchases for special jobs except material which is now already stored in our warehouses. To stamp the materials that we will have will be a big task, and it is a matter of importance to know if the union will pay the steward for stamping these goods or if each company will be burdened with the expense of the steward stamping the goods on hand.

Yours truly,

CHICAGO & RIVERDALE LUMBER CO.,
C. H. DECKER, *Secretary.*

Government's exhibit 10 was thereupon read to the jury, as follows:

CHICAGO, *May 13th, 1918.*

LUMBERMEN'S ASSN. OF CHICAGO,
404 Lumber Exchange Bldg., Chicago, Ill.

GENTLEMEN: In accordance with your request of the 9th inst. relative to material ordered, etc., to be stamped with special
48 label, following is a memo of all unshipped purchase orders to date:

Customer	Order	Job	Purchased
E. W. Sproul Co., 39th and Wood Sts	Doors	Special	Not placed.
Ed. Young, Englewood High	Sash and doors	"	Not placed.
Red. & Erickson, 211 N. Carpenter	Doors	"	Pacific M. D. Co.
McKeown Bros., 36th & 65th St	Doors	"	Ditto.
J. L. Carnegie & Son	Doors	"	Ditto.
G. Reininga, 64th & Harper	Doors	Special	Gould Mfg. Co.
T. Reininga, 61st & Lincoln	Sash & Doors	"	Sash on hand. Doors T. S. Hewell from C. L. Isben Co.
Olson Bros., 67th & Cornell	Doors	"	Not placed.
Hanson Bros. Co., 24th & Marshall Bv	Sash and doors	"	Not placed.

Respectfully yours,

COMMERCIAL SASH & DOOR CO.

Mr. SHALE. As part of Government's Exhibit 10 there was a carbon copy of a letter addressed to Mr. Brims, president of the Carpenters' District Council, dated December 6, 1918.

The following is a copy of letter of Commercial Sash & Door Co., dated May 13, 1918. From that time on it seems to be an exact copy of the letter just read.

Government's Exhibit 11, from the Commercial Sash & Door Company to the Lumbermen's Association, marked for the attention of Mr. Hooper, and dated August 8, 1918:

"You will recall May 9th a circular letter was sent out requesting a schedule of material from purchase orders for millwork which would have to have the carpenter's O. K. stamp before the material was put in place. On May 13th we submitted a memorandum covering our customer's name, the kind of material, and whether purchased at that time. Mr. Bromley informs us that it is his opinion that the council has not been furnished this information, they being under the impression that the material which is to receive this stamp has been stamped and they have no further need for the O. K. stamp. I would like to call attention to the fact that we have material yet to come in which was sold prior to May 1st, and which comes
49 under this provision and will have to be stamped. Kindly have the district council advised of these facts

"Yours very truly,

"COMMERCIAL SASH & DOOR COMPANY."

Government's Exhibit 12, apparently a reply to the letter just read, is dated August 21, 1918, addressed to Commercial Sash & Door Company:

"Replying to your favor of August 8th, would say that the schedule you mention of material was submitted to the labor committee. If you will kindly give us a schedule for material not shipped, which is now on way, purchased prior to May 9th, I will take it up with Mr. Bromley, of the union, and ask him to furnish carpenter's O. K. to purchase the proper materials. Awaiting your pleasure, we remain,

"LUMBERMEN'S ASSOCIATION OF CHICAGO,
"*Secretary.*"

———, ———,

Apparently dictated by E. E. Hooper.

Government's Exhibit 13, from the Commercial Sash & Door Company to the Lumbermen's Association of Chicago, marked for the attention of Mr. Hooper, and dated August 23, 1918:

"Replying to yours of August 21, relative to material yet to be stamped by the union, we beg to report that we have at the present time the doors for Olson Brothers, 67th and Cornell Ave., in our warehouse, which have not been stamped. In addition to these we have the sash and doors for both the Englewood High School, Edward Olson, contractor, and the John Spry School, Hanson Brothers, contractors, which will not be delivered to us for some time, and must be stamped when they come in. You can notify your office or the union headquarters, whichever way is best in your opinion.

"Respectfully yours,

"COMMERCIAL SASH & DOOR COMPANY."

Government's Exhibit 14, from Hartman-Sanders Company to the Lumbermen's Exchange of Chicago, dated April 24, 1918:

"Answering your circular letter of April 22, we answer your questions in the order in which you put them. April 13, May, 50 1918, Rockwell Manufacturing Company, Milwaukee, Wisconsin; Curtis, D. S. Company, Chicago, special job sash and doors.

"Yours truly,

"HARTMANN-SANDERS COMPANY."

Government's Exhibit 15, from William Morris & Sons Company, addressed to E. E. Hooper, secretary, Lumbermen's Association, dated April 24, 1918:

CHICAGO, *April 24th, 1918.*

Mr. E. E. HOOPER,
Sec'y., Lumbermen's Association,
11 S. LaSalle St. R. 404.

DEAR SIR: Replying to your communication of the 22d inst.

We have no material on hand nor any purchased from outside sources. Our material on hand consists of only stock manufactured by ourselves.

Yours truly,

WILLIAM MORRIS & SONS CO.,
Per H. F. MORRIS, *Secy.*

Government's Exhibit 16. This is the instance where the South Side Interior Finish Company furnished the information requested on circular letter sent out by the Lumbermen's Association. In response to the inquiry they state: "Date order was placed?" they have noted: "March 20, 1918. Next: "Date of agreed delivery?" "As needed." "From whom purchased?" "Morgan Sash & Door Company." "Is order for stock or for special job?" "Both." "What does order consist of?" "Doors."

Dated May 10, 1918.

"The above is the only order we have at this time which would come under classification of 'unshipped purchase orders' South Side Interior Finish Company."

Government's Exhibit 17, a letter from the Standard Sash & Door Company to the labor committee, Division G, dated May 3, 1918:

"In reply to yours of the 9th inst., wish to state that we have no unfilled orders placed for building material of any kind.

51 "We note that your letter does not refer to stock doors which we have on hand at the present time.

"In order that there may not be any misunderstanding we wish to advise you that we have about one thousand veneered doors in addition to those required to fill contracts which we have on our books at the present time. The largest part of these doors have been in our warehouse for at least two and a half years.

"Yours truly,

"STANDARD SASH & DOOR CO."

Government's Exhibit 18, from VonPlaten & Dick Company to Carpenters' District Council of Chicago:

JULY 24TH, 1918.

CARPENTERS' DISTRICT COUNCIL OF CHICAGO,
73 W. Randolph St., Chicago, Illinois.

GENTLEMEN: The following is an alphabetical list of the contracts taken before May 18, 1918:

Henry L. Appel Co., Glencoe, Illinois.

Harold Ebenholz, Columbus Park (Central Ave. nr. Harrison Street).

Swan Isaacson, Barry Ave. E. of Clark St.

Axel Johnson, 3637 Southport Ave.

Walter Levin, 15th & Millard Ave.

John A. Lundstrum, 39th & Millard Ave.

Smith & Merelovitch, 641-43 W. North Ave.

E. W. Sproul Company, Fairbanks Ct. & Huron St.

Peter Wagner, Desplaines & Madison St.

Also about 30 stock doors coming, that were short on previous orders.

Very truly yours,

VONPLATEN & DICK COMPANY,
H. D. TRAEGER, *Secretary.*

A notation at the bottom of the letter then, "Cy. to Lumbermen's."

Offers in evidence

Government introduces minutes of May 13th, as Exhibit 19, whereupon the document referred to was marked "Government's Exhibit 19."

52 Government introduces minutes of May 21st, as Exhibit 20, whereupon the document referred to was marked "Government's Exhibit 20."

Government introduces minutes of June 10th, 1918, as Exhibit 21, whereupon document referred to was marked "Government's Exhibit 21."

Government introduces minutes of June 24th, 1918, as Exhibit 22, whereupon document referred to was marked "Government's Exhibit 22."

Government introduces minutes of December 17th, 1918, as Exhibit 23, whereupon document referred to was marked "Government's Exhibit 23."

Government introduces minutes of March 7th, 1919, as Exhibit 24, whereupon document referred to was marked "Government's Exhibit 24."

Government introduces minutes of March 18, 1919, as Exhibit 25, whereupon document referred to was marked "Government's Exhibit 25."

Government introduces minutes of April 15, 1919, as Exhibit 26, whereupon document referred to was marked "Government's Exhibit 26."

Mr. E. E. Hooper resumes stand and says that on the second page of the minutes of May 13th the name "Carpenters District Council" is incorrect. It should be "Carpenter Contractors Association."

Mr. Shale (reading Exhibit 19):

"Meeting of Division G, Lumbermen's Association of Chicago, was held in 404 Lumber Exchange Building, on Monday, May 13, 1918. Members present: Anderson & Lind Manufacturing Company, Bedard & Morenci Mill Company, California Manufacturing Company, Chicago & Riverdale Lumber Company, William D. Dreiske, Heitmann Lumber Company, William Morris & Sons Company, C. E. Peterson & Company, Phillip Rinn Company, Standard Sash & Door Company, Union Interior Finish Company, Union Lumber & Mill Company, R. W. Bartelmann & Company, Bursick & Krupka Company, Chicago Sash Door & B. Manufacturing

53 Company, Commercial Sash & Door Company, Hartmann-Sanders Company, Lockwood & Strickland Company, Nollau & Wolff Manufacturing Company, Pilsen Sash & Door Company, Roseland Mill & Lumber Company, Sterling Lumber & Mill Company, VonPlaten & Dick Company.

"The question of a special stamp to be used on all goods made in the factories and the disposal of orders now on the books was explained by Mr. Reynolds, chairman of the labor committee.

"Mr. Lockwood, chairman of a special committee to formation a plan to employ a man to check up on materials delivered to buildings in Chicago and establish a bureau for that purpose, explained in regard to the matter, and after discussion it was the sense of the meeting that no action be taken at this time. It was suggested by Mr. Heitmann that we obtain an opinion from Attorney Adams as to the legality of such a bureau, and if not against the law the recommendation of the committee be approved and the expense suggested of $2,500 to finance such a bureau to be approved, to be borne by the members of the division, with 1917 sales in Cook County as a basis.

"The question of entering into an agreement with the Carpenter Contractor Association was discussed as regards future sales to members of that association, and Mr. Reynolds suggested that although the labor committee had time and again taken up this matter and finally arrived at what would be satisfactory to both parties, yet no action had been taken, and he thought the labor committee had gone as far as they could and it was now a matter for the consideration of the trade relations committee.

"Thereupon the matter was referred to that committee for consideration and report.

"There being no further business, the meeting adjourned.

"E. E. HOOPER, *Secretary.*"

54 Government's Exhibit No. 20

"Meeting of Division G, Lumbermen's Association of Chicago, was held in 404 Lumber Exchange Building on Tuesday, May 1st. Members present: Andrews Lumber & Mill Company, Anderson & Lind Manufacturing Company, Barr & Collins, R. W. Bartelmann Company, Beck Coal & Lumber Company, California Manufacturing Company, Chicago Sash D. & B. Manufacturing Company, Chicago & Riverdale Lumber Company, Commercial Sash & Door Company, William D. Dreiske, Hartmann-Sanders Company, Heitmann Lumber Company, Lockwood & Strickland Company, William Morris & Sons Company, Nollau & Wolff Manufacturing Company, C. E. Peterson & Company, Philip Rinn Company, Roseland Mill & Lumber Company, Standard Sash & Door Company, Sterling Lumber & Supply Company, Union Interior Finish Company, Von-Platen & Dick Company, Nielson Brothers Manufacturing Company.

"Mr. Reynolds, chairman of the labor committee, was called upon and reported the recommendations to the respective committees of the Carpenter Contractors' committee and the millmen. After the matter was fully discussed it was the sense of the meeting that the trade relations committee be instructed to work on the following basis in regard to an agreement between the two organizations:

"1. It is requested that millmen will not submit, without consent of contractor, estimate to owners or architects for extra millwork

while building is in charge of contractors. All millwork for extras shall be purchased by a contractor from the original mill contractor.

"2. To give all members of the Carpenter Contractors' As-
55 sociation on estimated prices a trade discount of five per cent, and the contractors to pay 85 per cent of the millwork as delivered on or before the 10th of each month following, a cash discount of two per cent.

"3. Estimates given to all other parties to be the regular estimated price.

"4. The elimination of all estimates in the selling of millwork to owners and architects cheaper than has originally been quoted to contractors.

"E. E. HOOPER, *Secretary.*"

Government's Exhibit No. 21

"Meeting of Division G, Lumbermen's Association of Chicago, was held in 404 Lumber Exchange Building on Monday, June 10. Members present: Anderson & Lind Manufacturing Company, Barr & Collins, Beck Coal & Lumber Company, Bedard & Morency Mill Company, Commercial Sash & Door Company, Chicago Sash Door & B. Manufacturing Company, William D. Dreiske, Chicago & Riverdale Lumber Company, Hartmann-Sanders Company, Heitmann Lumber Company, Lockwood & Strickland Company, William Morris & Sons, Nollau & Wolf Manufacturing Company, C. E. Peterson Company, Pilsen Sash & Door Company, Phillip Rinn Company, Standard Sash & Door Company, Roseland Mill & Lumber Company, VanPlaten & Dick Company.

"Mr. Arthur Root, chairman of the trade relations committee, reported that his committee had met with the carpenter contractors' committee, and finding that the labor committee had formerly made some arrangement with them, they did not accomplish anything, the Carpenter Contractors' Association desiring to meet with the labor committee, with whom they had originally formulated an agreement.

56 "Mr. George P. Rinn reported for the labor committee on their meeting with the carpenter contractors' committee on that date, June 10th, and after matters had been talked over there had been no definite plan arrived at. The carpenter contractors' committee thought it might be well if they could attend a meeting of the millmen, so that they could get their attorney to advise on any questions that might arise in reference to this agreement. They claim that already under the former understanding their membership had been largely increased on account of the original promises made by the labor committee, but they were aware that the contract made with the union was not just as originally stated, so it might be necessary to talk things over again.

"After the matter was fully discussed the following was offered by Mr. DeSwarte, seconded by Mr. Lockwood, and carried:

"Resolved, That a meeting be called at an early date at which the trade relations committee of the Carpenter Contractors' Association be invited to fully explain their proposition."

"(Signed) E. E. HOOPER, *Secretary.*"

Attorneys for Government state they are not reading all of the minutes, just essential parts that pertain to the case.

Government's Exhibit 22

"Meeting of Dovision G, Lumbermen's Association of Chicago, held in 404 Lumber Exchange Building on Monday, June 4, 1918. Members present: Anderson & Lind Manufacturing Company, Barr & Collins, Beck Coal & Lumber Company, California Manufacturing Company, Chicago Sash Door & B. Manufacturing Company, Heitmann Lumber Company, Commercial Sash & Door Company, Lockwood & Strickland Company, William Morris & Sons Company, Nollau & Wolff Manufacturing Company, Roseland Mill & Lumber Company, Philip Rinn Company, Sterling Lumber & Supply
57 Company, Union Interior Finish Company, Von Platen & Dick Company.

"The meeting was called to order by Mr. T. E. Reynolds in the absence of the chairman. He explained the labor committee meeting with the Carpenter Contractors' Association, stating that all acts as set forth in the contract which would be presented by the trade relations committee to the Carpenter Contractors' Association had been approved and signed by the labor committee in accordance with the authority of a meeting of Division G before said contract was entered into.

"Mr. Reynolds requested that a chairman of the meeting be appointed, and upon motion duly seconded Mr. Rinn was requested to act as chairman pro tem.

"Representatives of the Carpenter Contractors' Association were present, and Mr. Rinn called upon Mr. Doyle, president of that association, to address the meeting. He explained their side of the situation, as also did Mr. Green. The matter was discussed by all present, and it was the consensus of opinion that a solution would have to be worked out by the members of the division. A vote of thanks was tendered to the Carpenter Contractors' Association for attending the meeting and thoroughly explaining the matter under discussion.

"After the retirement of this committee and after the discussion it developed that article 2, referring to trade discounts, seemed to be the only stumbling block in making an agreement, and it being desirable that every member be given an opportunity of expressing his views, the following resolution prevailed:

"Resolved, that a meeting of the division be held on Thursday, June 27th, at 7.30 p. m., for the purpose of considering and taking definite action on the agreement with the Carpenter Contractors' Association. Mr. Lockwood, Mr. Root. Carried.

"Mr. Rinn appointed the following committee to draft a letter calling this meeting: Messrs. Lockwood, Morris, and Reynolds."

These minutes were prepared by Mr. E. E. Hooper, secretary.

58 Government's Exhibit No. 23

"Meeting of Division G, Lumbermen's Association of Chicago, was held in 404 Lumber Exchange Bldg. on Tuesday, December 17, 1919. Members present: Commercial Sash & Door Company, Chicago Sash Door & B. Mfg. Co., Chicago & Riverdale Lumber Company, Lockwood & Strickland Company, Philip Rinn Company, Roseland Mill & Lumber Company, Standard Sash & Door Company, Union Interior Finish Company, VonPlaten & Dick Company, Melrose Mill Company.

"The chairman stated that the first business to be considered was the report of the trade relations committee in reference to the Carpenter Contractors' Association.

"Mr. Lockwood stated that in the absence of the chairman, Mr. Root, he desired to state that they had held a meeting with a committee of the Carpenter Contractors' Association and nothing had been accomplished in the direction of improving conditions. He considered it important and thought something should be done. After discussion the following resolution was offered by Mr. Lockwood and seconded by Mr. Beck and carried:

"Resolved, that the labor committee and the trade relations committee of this division ask that a like committee from the Carpenter Contractors' Association meet us at our rooms on Thursday, December 26th, for discussion of conditions."

The signature to these minutes is omitted. It appears at the introduction, however, that Mr. E. E. Hooper was secretary.

59 Government Exhibit No. 24

"Meeting of Division G, Lumbermen's Association of Chicago, was held in 404 Lumber Exchange Building, on Friday, March 7, 1919. Members present: Anderson & Lind Manufacturing Company, Barr & Collins, Beck Coal & Lumber Company, Bedard & Morenci Mill Company, Chicago Sash, Door & Blind Manufacturing Company, Commercial Sash & Door Company, Chicago & Riverdale Lumber Company, A. Dietsch Company, Hartmann-Sanders Company, Lord Lumber Company, Lockwood & Strickland Company, William Morris & Sons Company, Nollau & Wolff Manufacturing Company, C. E. Peterson & Company, Pilsen Sash & Door Company, Philip Rinn Company, Roseland Mill & Lumber Company, Standard Sash & Door Company, Union Interior Finish Company, VonPlaten & Dick Company.

"Meeting was called to order by T. E. Reynolds, chairman; E. E. Hooper, secretary.

"The chairman stated that the meeting had been called to receive the report of the trade relations committee on their conference with the committee of the Carpenter Contractors' Association, and called for the report.

"Mr. Root, chairman of the committee, made a full report, and after matter had been thoroughly discussed, it was the sense of the meeting that it be received and ordered filed, and the committee requested to again meet with the Carpenter Contractors' Association, informing them as to the results of this meeting, and to endeavor to have them change the proposition to meet with the views of those objecting, and make final report.

"E. E. HOOPER, *Secretary.*"

60 Government's Exhibit 25

"Meeting of Division G, Lumbermen's Association of Chicago, was held in 404 Lumber Exchange Building on Tuesday, March 18, 1919. Members present: Anderson & Lind Manufacturing Company, Beck Coal & Lumber Company, California Manufacturing Company, Chicago & Riverdale Lumber Company, Chicago Sash, Door & Blind Manufacturing Company, Commercial Sash & Door Company, Heitmann Lumber Company, Lockwood & Strickland Company, Lord Lumber Company, William Morris & Sons Company, Nollau & Wolff Manufacturing Company, C. E. Peterson & Company, Philip Rinn Company, Roseland Mill & Lumber Company, Standard Sash & Door Company, Star Molding Company, Union Interior Finish Company, Melrose Mill Company, VonPlaten & Dick Company.

"Meeting called to order by T. E. Reynolds, chairman; E. E. Hooper, secretary.

"Minutes of the meeting held March 7th were read and approved.

"The chairman stated that the first matter to be considered would be the report of the trade relations committee on their conference with the committee of the Carpenter Contractors' Association, and called for the report.

"Mr. Arthur Root, chairman, stated that the following articles of agreement had been submitted to the Carpenter Contractors' Association for their ratification.

"Articles of agreement between the Millmen's Division and the Carpenter Contractors' Association.

"Article 1. It is requested that millmen will not submit estimates to owners for extra millwork while building is in charge of contractors.

"Article 2. To give the Carpenter Contractors on estimated prices
61 a trade discount of 15 per cent, and the carpenter contractor is to pay 85 per cent of the millwork as delivered on or before the 10th of each month, a cash discount of 5 per cent.

"Article 3. The millmen will endeavor to get contractors in as members of the Carpenter Contractors' Association.

"Article 4. The Carpenter Contractors' Association will endeavor to get millmen to join the Millmen's Association.

"Article 5. Trade discount to apply on any new building, or any amount exceeding $250.00.

"Article 6. All questions or differences that may arise will be reported to an arbitration committee appointed by Carpenter Contractors' Association and the Millmen's Association.

"Article 7. All estimates given on and after May 1, 1919, will be subject to trade discounts as given in article 2 of original agreement.

"Article 8. This agreement to be in force until May 31, 1921."

The following resolution was offered by Mr. Root, seconded by Mr. Beck:

"Resolved, That the agreement as submitted be ratified with the understanding that it applies to all carpenter contractors in Chicago, whether members of the Carpenter Contractors' Association or not."

"Upon roll call all voted 'aye,' except Chicago Sash, Door & Blind Manufacturing Company, whose representative stated he did not wish to vote on the matter in the absence of Mr. Dierssen. Also Anderson & Lind Manufacturing Company, who voted 'no,' explaining that as their shop was nonunion, therefore not using union labor, the Carpenter Contractors' Association could not install their work, consequently the agreement was of no interest to them.

"Upon motion, duly seconded, an arbitration committee was appointed, consisting of Mr. Lockwood and Mr. Knight.

"(Signed) E. E. HOOPER,
"*Secretary.*"

62 Government's Exhibit No. 26

"Meeting of Division G, Lumbermen's Association of Chicago, held in 404 Lumber Exchange Building, Tuesday, April 15th, 1919. Members present: Anderson & Lind Manufacturing Company, R. W. Bartelmann Company, Beck Coal & Lumber Company, California Manufacturing Company, Bedard & Morency Mill Company, Chicago Sash, Door & Blind Manufacturing Company, Chicago & Riverdale Lumber Company, Commercial Sash & Door Company, Heitman Lumber Company, Lockwood & Strickland Company, William Morris & Sons Company, Melrose Mill Company, C. E. Peterson Company, Philip Rinn Company, Roseland Mill & Lumber Company, Standard Sash & Door Company, Union Interior Finish Company, Von Platen & Dick Company.

"Meeting called to order by T. E. Reynolds, chairman; E. E. Hooper, secretary.

"Minutes of the meeting held March 7th were read and approved.

"The chairman called upon the trade relations committee for a report, and in the absence of Mr. Root Mr. Lockwood reported that the committee had not held a meeting with the Carpenter Contractors' Association since the last meeting of the division, and they had not as yet been advised that the articles of agreement between the millmen and the Carpenter Association had been ratified by that organization.

"It was the sense of the meeting that the ratification should be secured by the trade relations committee with as much dispatch as possible, in view of the fact that the agreement goes into effect on May 1st, 1919.

"It was resolved that the secretary be instructed to send by registered mail to all members of the division not present at this meeting a copy of the articles of agreement between the millmen and
63 the Carpenter Contractors' Association, calling attention to the date they go into effect, May 1st, 1919, and advising them that they will be expected to comply with same.

"E. E. HOOPER, *Secretary.*"

Witness further testifies that on April 18th, as secretary of the Lumbermen's Association, he sent a letter to members of Division G that he has an office copy of this letter.

Government introduces this letter as Exhibit 27, whereupon the document referred to was marked as requested, and is in words and figures as follows:

"DIVISION G.

"GENTLEMEN: You are hereby advised that the articles of agreement between the Millmen's Division and the Carpenter Contractors' Association have now been ratified by both parties thereto and will become effective on May 1st, 1919.

"Please take notice and be governed accordingly. If you desire another copy, kindly advise us and we will send you one.

"Yours very truly,

"E. E. HOOPER, *Secretary.*"

Witness states that he knows Mr. W. A. Irvine, who was connected with the Andrews Lumber & Mill Company; that sometimes he was present at these meetings and sometimes was not; that he has no recollection whether or not he was present at the meetings, the minutes of which have just been read to the jury; that he remembers him being at meetings, but doesn't remember the dates. He has no recollection of anyone else being present at any of these meetings representing the Andrews Company. He knows Mr. R. W. Bartelmann, who is connected with the R. W. Bartelmann Company, one of the defendants; that at some of these meetings he came himself and sometimes his son came; they each came about half the time; that at the several meetings, the minutes of which have just been read, they alternated in coming. He knows Mr. Beck, of the Beck Coal &

Lumber Co.; that most always he represented his company at these meetings. Also knows Mr. Frank Bartuska, of Cali-
64 fornia, connected with the California Manufacturing Company, and most all of the times he represented this company at the meetings. He knows Mr. E. S. Gamble, who sometimes represented the Chicago & Riverdale Company at these meetings. A Mr. Dekker also represented them at times, and that they practically alternated in attending these meetings. He knows Mr. G. C. DeSwarte, connected with the defendant, Commercial Sash & Door Company, who, together with Mr. Stevens, represented that company a' these meetings. Mr. DeSwarte was there more often than Mr. Stevens. He knows Mr. Arthur Dietsch, who represented the A. Dietsch Company at these meetings. He knows Mr. Frank S. Collins, connected with Barr & Collins, one of the defendants, and he represented his company at these meetings. He knows Mr. Theodore Kartheiser, of the Vincent Dlouhy Sash & Door Company, another defendant, who was present at these meetings. He knows Mr. P. J. Weidner, of the Hartman-Sanders Company, who sometimes represented this company at these meetings, together with a Mr. Cole; that they alternated in attending these meetings.

He knows Mr. Louis C. Haring, of the Melrose Mill Company, and he and his son sometimes alternated in attending these meetings. Mr. Haring came more often. He knows Mr. Harry F. Morris, who represented the William Morris & Sons Company at these meetings. He knows Mr. Arthur Root, who represented the Nollau & Wolff Manufacturing Company at these meetings—Mr. Root was chairman of the trade relations committee. Also knows John Westberg, who represented the C. E. Peterson Company at these meetings, which company was sometimes represented by a Mr. Knight. Also knows Mr. George P. Rinn, connected with the Philip Rinn Company, and he represented that company at these meetings most of the time. Mr. Rinn's brother came once in a while. Mr. Rinn was on the labor committee and at one time was chairman of that committee. He has a recollection that a Mr. August Newquist represented the South Side Interior Finish Company at these meetings. Also knows a Mr. Ewald Dierssen, of the Chicago Sash & Door Co., who represented that company at these meetings most of the time and who took an active interest in these meetings. Also knows Mr. John Algot Olson, who represented the Standard Sash & Door Co. at these meetings and who was at one time chairman.
65 Also knows Mr. Frederick Werkmeister, who represented the Union Interior Finish Company at these meetings—that sometimes a Mr. Reynolds would attend also on behalf of the Union Interior Finish Company; that Mr. Werkmeister may have been on some of the committees. He also knows Mr. H. D. Traeger, who, together with Mr. James A. Dick, attended these meetings on behalf of the VonPlaten & Dick Company. Also knows Mr. T. E. Rey-

nolds, who, together with Mr. Werkmeister, represented the Union Interior Finish Company at these meetings; that Mr. Reynolds was on the labor committee.

He does not know whether or not these defendant millmen manufactured all of the stuff they sold. The outside employes are carpenters and the inside employes are mechanics or machine men; that the inside men are the ones who work for the material men and the outside men work for the contractors. The difference between outside and inside material as referred to in our minutes is, I suppose, that outside material covers the finish manufactured by factories outside of Chicago.

That Anderson & Lind ran open shop, and the Nollau & Wolff Co. ran open shop up to 1918; he doesn't remember what time in 1918 it was unionized; that it must have been before the contract was executed which has been read into the minutes—that is, the contract between the Carpenter Contractors' Association and the labor unions—but he does not know whether it was before or not. He does not know whether or not the material men—that is, the millmen's association and the contractors' association—ever entered into a contract before this year; that the millmen and the labor unions had for many years. Motion by counsel for the Carpenter Contractors' Association to strike answer of witness; that witness stated that never before did they enter into a contract with the Carpenter Contractors' Association—there is no evidence of that—it is simply an assumption that they did this time. Motion overruled. Exception taken by counsel for defendants.

For a number of years before this, probably eight or ten, the labor committee of my organization had been composed of Reynolds, Rinn, and Morris, and they occasionally changed chairmanships.

66 Cross-examination of Mr. Hooper by Mr. Fink

That about seventy per cent of the people engaged in the building industry in Chicago belong to the lumbermen's association; the ironworkers do not belong to the lumbermen's association; the brickmen do not belong; he doesn't know just what per cent belongs to the lumbermen's association; that only the people engaged in the lumber and woodworking business belong to the Lumbermen's association. He kept the minutes accurately the best he could—that he didn't put everything that transpired into the minutes except where resolutions were passed—he only put down what he regarded as important. Aside from the minutes he doesn't know whether he remembers some of the things that transpired at these meetings; it has been so long ago. He remembers that Mr. Dick was present at some of these meetings; and he thinks he heard him say that if article 3 in the Carpenter Contractors' Association went into effect, he wanted to sell his mill. Article 3 was under discussion, and they were interchanging views. He thinks this discussion

took place before article 3 was ever signed; that is all he heard Mr. Dick say that he remembers. They had been trying to get this article 3 changed for the last eight or ten years. Every time they had a contract with this contractors' association the district council always tried to get the article taken out or changed. That this is all he bases his memory on of Mr. Dick being present at these meetings. He doesn't remember whether or not he ever heard Mr. Bartelmann express himself on article 3. He never heard Mr. Bartuska express himself on article 3 at these meetings. He knows Peter Beck, but doesn't know whether Beck said to him personally or at a meeting that article 3 would be a bad thing; that a good deal of the material that Beck bought was from outside of Chicago. He doesn't remember Mr. Frank S. Collins saying anything on the subject at these meetings. He knows Mr. Dekker, who told him he was opposed to article 3. Doesn't remember whether Mr. DeSwarte said anything about it. Doesn't remember anything said by Mr. Dierssen of Mr. Dietsch. Mr. Gamble and Chicago & Riverdale Co. are connected with Mr. Decker; they bought most of their material from the outside, but I don't remember Mr. Gamble saying he was
67 opposed to it. He doesn't remember anything said by Messrs. Haring, Irvine, Kartheiser, Newquist, Olson, or Root. He heard Mr. Traeger say he was opposed because they bought a good deal of material from manufacturers outside of Chicago; that is, that he was opposed to any change in article 3. Doesn't remember anything said by Messrs. Werkmeister, Westberg, or Weidner. He heard the members of his division talk about this proposed change in article 3 a good many times, the matter being discussed around and at meetings. He was secretary of the association; heard a lot of talk on the subject.

You know how these men stood with reference to the proposed change in article 3.

A. Yes.

Q. How did they stand?

Objection by counsel for Government. Objection sustained. Exception by counsel for all defendants.

Q. What was the nature of the talk that you heard by members of Division G with reference to the change in article 3? Was it for the change or was it against the change?

Objection by counsel for Government. Objection sustained. Exception by counsel for all defendants.

WITNESS. He has no recollection of what was said at the meeting of April 15th other than what is in the minutes. At the meeting a discussion came up about sending in a list of unshipped orders and some one probably asked what it was all about; that is, some of the millmen defendants. Some of them said they never heard that article 3 had been changed before and a good many of them were mad about it, and Mr. Dick, among others, said, "My property is for sale." About ninety to ninety-five per cent of them expressed an opinion that they were opposed to any change. He remembers

the letter dated March 22d that he wrote to members of Division G, introduced as Government's Exhibit 2.

Mr. FINK (reading):

"This is to advise you that the contract with your inside hands is now under negotiation, but will not be consummated until the signing of the agreement of the Carpenter Contractors' Association with the outside carpenters."

Witness states that he remembers that "their agreement expired May 31st, 1918"; also remembers stating in letter "there will be no cessation of work pending the execution of this agreement.

68 Therefore do not be disturbed if the agreement with our union is not signed by April 1st." Doesn't know whether he dictated it or whether the labor committee dictated it; that it sounds like the language of the labor committee. Doesn't know what was meant in the letter by saying "inside hands" and "will not be consummated until the signing of the agreement of the Carpenter Contractors' Association with the outside carpenters." Doesn't know why the millmen's agreement with the inside men was not to be consummated until the signing of the agreement of the Carpenter Contractors' Association with the outside carpenters; that the information will have to be obtained from the labor committee. My opinion based on action taken before in similar cases is that sometimes in making up agreements they are delayed on account of seeing what the advance is going to be—that is, by people in the same line of business. For instance, if the Carpenter Contractors' Association gives their men an advance of five or ten cents, as the case may be, then it would be a matter that the labor committee would consider in giving them an advance, and we would often have agreements that we don't sign but we continue the old rate of wages until some other craft in the same line of business makes a wage-scale agreement, and then we go to work and make up an agreement and date that agreement back to where the agreement expired. If the agreement was made up to May 1st and we did not arrive at an agreement until the middle of July, whatever wage scales were agreed to in July would be paid by the employer from May 1st. That is the only explanation I can give why these agreements are run over that way. He remembers the following letter, dated March 29th, written to members of Division G, introduced as Government's Exhibit 3, as follows:

"Your labor committee has found it necessary to make a change in their instructions sent you under date of March 22d. You are now advised that, beginning with April 1st, you shall operate your plant eight hours a day, between the hours of 8 a. m. and 5 p. m., at the minimum rate of 50 cents per hour.

"This arrangement to continue until such time as this committee consummates agreement with Carpenters' District Council for the ensuing three years."

He says that the labor committee dictated that letter; that

69 it was written our in longhand and handed to me to copy. As to the meaning of the language used in that letter he

knew nothing except that they probably came to an understanding with the labor unions that they would base their scale on fifty cents until such time as they made a contract. The contract had not been signed at that time (March 29th); he doesn't think it was signed until some time in April. That he supposes the reason the labor committee made a change in the instructions sent under date of March 22d was that the business agent of the union insisting on their paying them fifty cents. Before that time they were paying forty-five cents. He thinks the change referred to in the letter was with reference to the wage scale and also eight and one half hours to eight hours, or nine hours to eight hours. That the reason the members were advised that, beginning April 1st, they should operate their plant eight hours a day, was that the labor committee, the arbitration committee, and the inside men had come to an understanding on that. He is quite certain that the labor committee had not consummated the agreement with the district council; doesn't know when it was expected to be consummated. No member of the labor committee told him to write this letter; it was handed to him in longhand. He never attended the meetings of the arbitration committee and the labor committee. He thinks the agreement between the millmen and the inside carpenters was actually consummated about April 18th. He drew the minutes of the meeting of Division G, of March 5th, indicating that the labor committee was given authority to make the best contract possible with the inside carpenters, that that was the resolution passed, and that he wrote the minutes as follows, reading:

"After the matter was discussed, it was the sense of the meeting that it be placed in the hands of the labor committee without any recommendation, with the request that they make the best contract possible"; that that was the resolution dated March 5th, over a month before April 18th.

Minute of meeting of Carpenters' District Council of March 9th, 1918, read as follows:

"Millmen's arbitration board presented a proposed three-year agreement with their employers with a wage scale of fifty
70 cents the first year, fifty-five cents the second year, and sixty cents the third year, with an eight-hour day and four hours on Saturday."

Motion prevailed, it be adopted as read.

Minute of meeting of Carpenters' District Council of March 9th, 1918, offered in evidence as millmen's Exhibit No. 1, whereupon the document referred to was marked as requested.

He states that the minute shows that this agreement was agreed to by the Carpenters' Union on March 9th instead of April 18th, but he doesn't know anything about it; he doesn't know what the labor committee did. He doesn't remember whether or not the agreement for fifty cents an hour the first year and the reduction of the hours to eight hours was the agreement that was actually signed on April 18th.

Mr. FINK:

Q. Between March 5th and March 9th, the labor committee of Division G. had reached an agreement with the committee of the inside men, had they not?

Objection by counsel for Government on grounds that witness was not present at these meetings and knows nothing about them. Objection sustained. Exception by counsel for defendants.

He states he is familiar with the manner in which a labor union negotiates its agreements with its employers. He does not know whether it is a rule of union labor that a wage agreement, after meeting the approval of the district council, must be further ratified by the locals. He doesn't remember when the agreement between the millmen of Division G and the inside carpenters was ratified by the locals.

The following minute of the Carpenters' District Council of March 30th, 1918, read by Mr. Fink:

"The referendum vote on the adoption of the millmen's agreement, resulted as follows: In favor, 1,044; against, 205.

Minute offered in evidence as part of the cross-examination. No objection by Government.

WITNESS. He hasn't anything to say about his statement that the agreement was not concluded until April 18th; he was not notified of it. He understands that millmen who are not members of Division G sign the same agreement that the inside carpenters, members of Division G, sign; that after they have negotiated with
71 us and got an agreement, they make the other outside yards sign the same agreement; that when the union demands it, that means that they sign those agreements; that if they don't sign it, they go on strike. He states he doesn't know that this agreement was actually signed by a number of millmen, nonmembers of Division G, prior to April 6th.

Mr. Fink offers in evidence from the same book the minutes of the meeting of the Carpenters' District Council of April 6th, 1918, as follows (reading):

"The vote cast on the business proposition to elect three millmen"—

"The president reported on the Saturday afternoon proposition and stated that the millmen's business agents were very successful in having their agreement signed by the various mills and cabinet shops, except the Liquid Carbonic, which was expected to sign on Tuesday next.

"He also stated nothing to report on the outside agreement."

Witness states he does not remember the date upon which the agreement between the carpenter contractors and the outside men was executed; he doesn't know whether it was before or after April 18th, or whether it was agreed to by the joint arbitration board on April 9th; he had nothing to do with the meeting and knows nothing about their business.

The introduction of the minutes was objected to by the Government because they had not been identified.

Objection sustained. Exception by counsel for each of the defendants.

Witness—he did not talk a good many times with the carpenter contractors along about this time; he does not know, of his own knowledge, what the sentiment of the carpenter contractors was with reference to the proposed change in article 3; he does not know whether they were for or against it; he does not know how many times it came before their meetings for consideration.

Mr. Fink calls attention of witness to the following minute of the meeting of April 19th, Division G (reading):

"The question of having all goods stamped with a union label was discussed and it was developed that many goods already purchased from the outside world necessitate some arrangement by which they could be used."

72 Witness says he wrote those minutes and made a correct record as best he could of what was said and done: that he wrote down the discussion as he understood it; that the discussion as he reported it was as to goods which would have to be stamped with the union label; that he then said (continuing reading of minutes):

"It was developed that many goods already purchased from the outside would necessitate some arrangement by which they could be used"; that he meant by that they would have to be stamped with a union label; that when he said "goods purchased from the outside" he meant they would not handle outside goods which did not already bear the union label. If it was outside goods and had the union label on, they would handle it. That when he speaks in his correspondence and minutes of outside goods and of shipping orders he meant outside goods which had not been manufactured by union labor and which did not bear the union label. States that he was one of the signers of the agreement of April 18th, introduced as Government Exhibit No. 5, and that he understood what it meant. He remembers article 1, as follows (reading):

"The parties of the first part agree to hire only such woodworkers who work in the factory, including foremen who are members in good standing of the United Brotherhood of Carpenters and Joiners of America, who carry the current quarterly working card issued by the above-named organization, reserving the right to hire whomsoever they please."

States that his interpretation of this article is that if a good mechanic should present himself to one of the millmen he has the right to hire him, whether he is a union man or a nonunion man, but he must become a union man after he is employed; that is, he hires whomsoever he pleases.

He doesn't know why the provision to hire only members of the union was put in, but that had been in the contract, to his knowledge,

for the last twenty years; that there was no particular reason why in the year 1918 they agreed to hire only members of the union; that they have always agreed to that in all their contracts; he doesn't know why they always did agree to it.

Says there is an organization in Chicago known as the Wood-
73 workers' Association, composed of cabinet makers; that they have about eight or ten members. There is also another association known as the Cabinetmakers' Association that has thirty or forty members, maybe fifty members; they are not members of the Lumbermen's Exchange. The Woodworkers' Association is not a member of the Lumbermen's Exchange. He doesn't know anything about the agreement which these two associations, the Woodworkers' Association and the Cabinetmakers' Association, signed with their employes. He doesn't know whether or not it contains the same provision as to hiring only union men. Sometimes he was present at the negotiations that led up to the signing of this contract, or April 18th.

Mr. Fink:

Q. The Government charges in this indictment that the consideration of the millmen agreeing to hire only union men was that the union men would refuse to handle nonunion material; is that a fact?

Objection by counsel for Government. Objection sustained. Exception by counsel for each of the defendants.

Witness states that at any of the meetings he attended or in any of the talks that he has heard, he heard nothing suggested or intimated that the millmen would agree to hire only members of the union if the union would agree not to install anything but union-made material. He knows the men indicted and the corporations they represent as they are called off; he knows that in 1918 they employed about 1,200 men; 1919 about 1,230 men, and in 1920 about 1,300 men. The minutes show as correctly as they can who were present at these different meetings and who were not; he would not be able to tell if Mr. Kartheiser was present at any of these meetings unless the minutes so stated, or any of the other defendants.

Cross-examination by Mr. Streeter

Identifies document bearing date of July 2, 1918, as bearing his signature. Document marked for identification as "Defendant Root's Exhibit 1." He is not able to say whether Mr. Root attended any of these meetings, except as they appear in the minutes themselves. Doesn't remember whether Mr. Root was active in the affairs of the Millmen's Association prior to the year 1918. Doesn't remember who represented Nollau & Wolf at the meetings prior to
74 January 1, 1918. Mr. Nollau died December 13, 1918, and Mr. Root hardly ever attended any meetings while Mr. Nollau was alive. He doesn't think that Mr. Root attended any meetings for two or three months after Mr. Nollau's death. The correspondence which has been introduced covers what he had in his possession re-

lating to outside material, he doesn't think he had any correspondence as to that with the Nollau & Wolf Manufacturing Company; whatever he had he turned over to the labor committee, and except as it is in evidence he had no correspondence. He thinks the report of Mr. Root was oral, as mentioned in Government's Exhibit 24, being the minutes of March 7th, 1919, and which state that Mr. Root, chairman of the trade relations committee, made a full report. He remembers the resolution in Government's Exhibit 25, being record of the meeting of March 18, 1919, after reciting proposed articles of agreement between the Millmen's Division and the Carpenter Contractors' Association, which reads as follows:

"The following resolution was offered by Mr. Root, seconded by Mr. Beck: 'Resolved, that the agreement as submitted be ratified, with the understanding that it applies to all carpenter contractors in Cook County, whether members of the Carpenter Contractors' Association or not.'"

He doesn't remember the discussion leading up to the adoption of this resolution. States that his recollection is with reference to the trade discount applying to all carpenter contractors; that Mr. Root stated he had been talking to Mr. Adams, the attorney, and Mr. Adams said it must include all contractors, whether members of the Carpenter Contractors' Association or not, all independent contractors. Mr. Root told him he had gone to Mr. Adams, the attorney for the association, and he advised him it should apply to everyone absolutely, and Mr. Adams advised the meeting that he would not recommend the ratification of the agreement unless the trade discount should apply to everyone.

Cross-examination by Mr. Kinley

He says that he has never seen any signed agreement with reference to the discount between the Millmen's Division G and the
75 Carpenter Contractors' Association; he doesn't know whether any such agreement was made; there was one proposed but he doesn't know whether they accepted it or not. He never heard of anyone giving a discount. He never heard of any contractor getting connected as secretary of the Lumbermen's Association he never a discount. He ceased his activity as secretary of Millmen's Division G, January 1st, 1921. During the twenty years or more that he was heard of the millmen entering into any trade discount with them or never heard of them giving a trade discount.

Cross-examination by Mr. Cattell

He has a recollection of a Mr. Gamble or Mr. Decker, representing the Chicago & Riverdale Lumber Company, attending a meeting prior to April, 1918; he doesn't recollect what time of the day Mr. Decker arrived at the meeting of April 19, 1918; their place of business is located in Riverdale, about 19 miles south; he doesn't know

whether Mr. Decker arrived at the meeting of April 19, 1918, after the resolutions were passed or not. Doesn't remember Mr. Decker asking him what happened.

Says that Mr. Decker and Mr. Gamble had always stated they had been opposed to any change in article 3, because the Chicago & Riverdale Lumber Company not only bought its material from outside mills, but sold outside of Chicago.

Redirect examination by Mr. Fowler

He says article 3 was not in his contract between the union and the millmen; that article 3 is an article in the Carpenter Contractors' Association, a separate organization from the millmen, a different kind of agreement entirely; it was the cardinal feature of the Carpenter Contractors' agreement, it contained seven or eight points. He doesn't know why the article is so much discussed, but he thinks he heard Mr. Thompson state they put up all manufactured material except prison-made and nonunion. He never saw the Carpenter Contractors' agreement. This article was discussed in his organization; that article 1 is a different one; that formerly they put up all manufactured material except prison made; that now they put
76 up all manufactured material except prison-made and nonunion made; that this is the provision that was talked about by the people in his organization; that it would be a great detriment to them. He states that in the letter of March 22d, 1918, which says in the first paragraph "this is to advise you that the contract with your inside hands is now under negotiation," that by "inside hands" is meant the inside mechanics in the Millmen's Association; they were employees working for the millmen; that further on, where it says "but will not be consummated until the signing of the agreement of the Carpenter Contractors' Association with the outside carpenters"; that that means employees of the contractors. He was present when a delegation came over from the Contractors' Association to one of the meetings; that he heard talks made by them on that occasion; this was when Doyle and Green made speeches, June 24th, 1918; they were talking about this discount proposition. There were three or four outside concerns shipping goods of this character into Chicago that were unionized, some at Milwaukee and some at Grand Rapids and some at Cincinnati. He doesn't know how many concerns were shipping goods in here of nonunion material, but there were a good many of them. He doesn't know how many of them were union.

Mr. J. D. ROONEY, called as a witness on behalf of the Government, having been first duly sworn, testified:

That his name is J. D. Rooney; he is a special agent of the United States Department of Justice; has been connected with that department for eight years. He knows Daniel J. Ryan, who was secretary of the Carpenters' District Council Arbitration Board in 1921.

He and Mr. Howe together had an interview with Mr. Ryan. Mr. Ryan delivered into the possession of Mr. Howe and myself, in room 827, Federal Bldg., in response to a subpœna issued on Mr. Daniel Galvin, secretary of the Carpenters' District Council, a bundle of contracts wrapped in newspaper and the minutes of the arbitration board of the Carpenters' District Council. He has with him the bundle of papers which Mr. Ryan delivered to him at that time; he made a list of the documents contained in the bundle; the list is
77 correct and has been checked. The documents are contracts between the Carpenters' District Council and the Carpenter Contractors' Association with the independent carpenter contracts. Each one of them is with a distinct contractor; that is, a contractor who did not belong to the contractors' association. He prepared a list of those contracts. Government introduces one of the contracts as Government's Exhibit 28, and the list prepared by Mr. Rooney as Government Exhibit 29. The contract is identical with the contract that was entered into between the labor organization and the district council and the contractors' association; there was one entered into with the contractors' association and a separate one, exactly like it, entered into between the district council and 218 independent contractors, whereupon by agreement of all defendants the documents were marked as requested as Government's Exhibits 28 and 29, respectively.

Cross-examination by Mr. Fink

States that the bunch of contracts as represented by the list represents contracts made with independent contracts—that is, nonmembers of the contractors' association—the dates of the contracts are specified in the list; he doesn't remember the range of time covered by these contracts; he doesn't know if the rate of pay is the same in all the contracts; the contracts as listed show some in 1918 and some as late as 1920.

Contract dated September 25th, 1918, marked as "Government's Exhibit 28" and the list as "Government's Exhibit 29."

H. J. Cohlgraff, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

His name is H. J. Cohlgraff; he lives at 1448 Arthur Ave.; is assistant secretary of the Associated Builders of Chicago, which position he has occupied since 1920. In 1918 he was secretary of the Carpenter Contractors' Association; he had been secretary of that association for five or six years, which latter position he held up to
78 1920. He prepared the minutes of their meetings, and has the minutes book with him. A stenographer prepared the minutes of the meetings under his direction. He knows what occurred at those meetings as accurately as could be from the stenographer's notes. The minutes were signed by him.

Government introduces the minutes of the meeting of December 7, 1917, as Government's Exhibit 30.

Mr. THOMPSON, on behalf of the union defendants. May the ruling of the court regarding these minutes apply in the same way as before regarding the union defendants?

The COURT. Certainly; also as regards Mr. Root and Mr. Beals, defendants.

Whereupon the document referred to was marked "Government's Exhibit 30."

Government introduces the minutes of January 9, 1918, as Government's Exhibit 31 (whereupon the document referred to was marked "Government's Exhibit 31").

Government offers the minutes of February 13th as Government's Exhibit 32 (whereupon the document referred to was marked "Government's Exhibit 32").

Government offers the minutes of March 13th as Government's Exhibit 33 (whereupon the document referred to was marked "Government's Exhibit 33").

Government offers the minutes of April 10th, 1918, as Government's Exhibit 34 (whereupon the document referred to was marked "Government's Exhibit 34").

Mr. Shale reads minutes on behalf of the Government:

Government's Exhibit 30 is the minutes of the Carpenter Contractors' Association, reading of the minutes of the last meeting of the joint board of arbitration:

"President Doyle stated that a new agreement with the Carpenters' District Council was to be discussed and that the members should make suggestions in writing.

"Mr. Doherty suggested that the members make suggestions orally and the stenographer should take them down and give copy to the board of arbitration.

"After some discussion regarding this subject Mr. Illsley moved that the association's request that the arbitration committee present to the association at a time that will be convenient a recommendation for the new agreement for action to be taken at that meeting.

"Motion seconded by Mr. Brocob. Motion carried."

Minutes signed by H. J. Cohlgraff, secretary.

79 The next exhibit is Government's Exhibit 31 (reading):

"Regular meeting, January 9, 1918.

"The regular monthly meeting of the Carpenter Contractors' Association was held in room 1318, West Washington Street, on Wednesday, January 9, at 2 p. m."

Mr. SHALE. Under the heading "Reports of special committees" is the following:

"Committee appointed to meet with the millmen of Chicago to treat with them for better treatment for the contractors and the trade.

"Mr. Green reported that the committee had met once with the millmen, but nothing was accomplished except to get better ac-

quainted. Committee will meet again on Friday the 11th and will probably have something to report at the next meeting.

"President Doyle stated that there was nothing definite to report on the new agreement, but the committees are meeting from time to time.

"Mr. Ashbeck moved that the eight cardinal principles, or Article III of the present agreement, should remain intact. Motion seconded by Mr. Illsley. Motion carried."

Minutes signed H. J. Cohlgraff, secretary.

Government's Exhibit 32, minutes of the regular meeting of February 13, 1918, of the Carpenter Contractors' Association, held in Chamber of Commerce. Under the heading "Reports of standing committees":

"The committee appointed to meet with the millmen, Mr. McGimsie, stated that there had been no meeting since the report at the last meeting of the association, but they expected to have another meeting some time this week."

Government's Exhibit 33

"The regular meeting of the Carpenter Contractors' Association was held in the Chamber of Commerce on Wednesday, March 13, at 2 p. m." Under the heading "Report of special committees."

"President Doyle reported for the committee which had been appointed to meet with the Millmen's Association. He read
80 the proposition submitted to the millmen and stated that the most of them had been approved by the millmen's committee, and that within two or three weeks they would be able to close this agreement with the millmen.

"The president stated that the new agreement would be up for discussion by the members of the association and the changes would be explained by the members to the arbitration board.

"Motion was made by Mr. Solomon that the changes in the old agreement should be read, after which the section changed should be voted upon separately.

"Motion seconded by Mr. Green.

"The secretary read the changes in the agreement, which comprised the following: 'Section 3 of Article III, and Articles V, VI, VII, VIII, and LX, and Articles XIV and XV of the working rules.

"Article III of section 3. Mr. Milord moved that Article III of section 3 be adopted as amended. Mr. Green seconded the motion.

"Mr. Brocob asked Mr. Milord to amend his motion to read to adopt Article III of section 3 as amended, but held in abeyance until we have an agreement with the millmen.

"With the consent of the seconder of the motion, Mr. Milord accepted the amendment to his motion. The motion was lost.

"Mr. Doherty moved that article 3 of section 3 be adopted as amended.

"Motion seconded by Mr. Green.

"Motion lost.

"After a standing vote was taken, which was 35 for and 44 against, Mr. Ashbeck moved that article 3 of section 3 be recommended by this association to go into the new agreement as in the old agreement.

"Mr. McGimsie seconded the motion.

"Motion carried."

Minutes signed H. J. Cohlgraff, secretary.

Government's Exhibit 34

"Regular meeting of the Carpenter Contractors' Association was held in the Chamber of Commerce on Wednesday, April 10, 2 p. m.

"New business: Section 3 of article 3 was the next order of
81 business, and the Chair asked the secretary to read the new section as agreed by the board of arbitration.

"There will be no restriction against the use of any manufactured material except nonunion and prison-made. This shall not apply to machine-made flooring, ceiling or ceiling partition, planed lumber or timber, or hardware of any kind.

"Mr. Ashbeck moved that we stand by a motion made at a previous meeting concerning section 3 of article 3.

"The chair asked for a secret ballot, the result of which was 27 for and 41 against.

"Motion was then made and seconded that we adopt section 3 of article 3 as read.

"On a rising vote it was as follows: 44 for and 11 against."

Minutes signed H. J. Cohlgraff, secretary.

Witness states he has in his possession the agreement that was signed by representatives of his association and the representative of the district council, the labor organization; that the agreement was signed by the following members of his association: Mr. D. H. Doyle, president; A. C. Wehrwein, Frank E. Doherty, W. J. Scown, and Frank M. Stressenreuter—Mr. Doyle was president of the Carpenter Contractors' Association—the other gentlemen were members of the arbitration board. The by-laws of the Carpenter Contractors' Association called for an arbitration board to consummate agreements as they expired, and they were duly elected by the association at each annual election. He believes that the labor organization also had a board and held meetings of its own; that Mr. Daniel J. Ryan kept the minutes of those meetings. That his organization was composed of carpenter contractors who were engaged in construction work in Chicago and vicinity; to his knowledge no one outside of Chicago belonged to it. There were also a number of contractors; that is, those who did not belong to his organization, in the contractors' association; he has no idea how many. There were about five hundred members in his organization, and the gentlemen just mentioned composed the arbitration board; that Mr. Doyle was

president of the organization and by virtue of his office he was a member of that committee or board. He believes that Mr. T. J. McGimsie was vice president of the Carpenter Contractors' 82 Association; he was a member of the board of directors; he doesn't recall who composed the board of directors.

Government offers this contract as Government Exhibit 35 (whereupon the document referred to was marked "Government's Exhibit 35").

Government's Exhibit 35, read by Mr. Shale:

"Agreement and working rules between the Carpenter Contractors' Association of Chicago and the Carpenters' District Council of Chicago, Cook County and vicinity, in effect June 1, 1918, to May 31, 1921.

"Preamble: We, the members of the Carpenter Contractors' Association of Chicago and the members of the Carpenters' District Council of Chicago, Cook County and vicinity, for the purpose of lawfully promoting our mutual interests, and in order to maintain our present peaceful, just, and equitable relations, and in the future to promote and better the conditions in the carpenter trade and the building industry in general, do, in good faith, through our officers, enter into the following agreement:

"1. This agreement, made this first day of June, 1918, by and between the Carpenter Contractors' Association of Chicago, party of the first part, and the Carpenters' District Council of Chicago, Cook County and vicinity, party of the second part, for the purpose of preventing strikes and lockouts and facilitating a peaceful adjustment of all grievances and disputes which may from time to time arise between the employers and employes in this trade:

"2. Witnesseth: That both parties hereby agree that there shall be no strikes, lockouts, or stoppage of work without the sanction of the joint conference board, of which parties hereto are members, and that they will by all lawful means compel their members to comply with the arbitration agreement and working rules as jointly agreed upon and adopted, and that where a member or members, affiliated with either of the two parties to this agreement, refuse to do so, they shall be suspended from membership in the association or union to which they belong.

"It is understood that in all buildings or jobs under construction, alterations and repairs, no member of the second party shall 83 be deprived of his right as an individual to refuse to work in immediate conjunction with any one in his own trade on any construction work which is not proceeding in accordance with the terms of the joint arbitration agreement and working rules mutually agreed on in the trade, and with the terms of the joint agreement in force between the Building Construction Employers' Association and the Chicago Building Trades Council.

"3. Principles upon which this agreement is based: Both parties hereto this day hereby adopt the following principles as an abso-

lute basis for their joint agreement and working rules, and to govern the action of the joint arbitration board as hereinafter provided for.

"(1) That there shall be no limitations as to the amount of work a man shall perform during his working day.

"(2) That there shall be no restriction of the use of machinery or tools.

"(3) There shall be no restrictions against the use of any manufactured material except nonunion and prison-made. This shall not apply to machine-made flooring, ceiling, or ceiling partition planed lumber, timber, or hardware of any kind.

"(4) That no person shall have the right to interfere with workmen during working hours.

"(5) That the use of apprentices shall not be prohibited.

"(6) That the foreman shall be the agent of the employers.

"(7) That the workmen are at liberty to work for whomsoever they see fit, but they shall demand and receive the wages agreed upon by the joint board in this trade under all circumstances.

"(8) That employers are at liberty to employ and discharge whomsoever they see fit.

"4. Arbitration board: Both parties hereto agree that they will at their annual election each year select an arbitration committee to serve for one year, or until their successors are selected and qualified. In case of death, expulsion, removal, or disqualification of a member or members of the arbitration committee, such vacancy shall be filled by the association or union at its next regular meeting, party of the first part being conceded the right to elect members of the committee in accordance with the constitution of their association.

"5. Number of members: The arbitration committee for
84 each of the two parties hereto shall consist of five (5) members, who shall, within thirty days after the completion and signing of this agreement, meet and form the joint arbitration board by electing a president, secretary, treasurer, and umpire, and thereafter meet not later than the third Monday of January in each year in joint session, when they shall organize a joint arbitration board for the ensuing year.

"6. Qualification of members of the arbitration board: No member who is not engaged in the trade, or holds a public office, either elective or appointive, under the municipal, county, State, or National Government, shall be eligible to act as the representative in this trade joint arbitration board; and any member shall become disqualified to act as a member of this trade joint arbitration board and cease to be a member thereof immediately upon his election or appointment to any public office or employment. This clause, however, may be waived by unanimous consent of the joint arbitration board.

"7. Umpire: An umpire shall be selected who is in nowise affiliated with this trade. In the event of any umpire for any reason

being unable to serve, any unsettled dispute within the jurisdiction of this agreement shall be settled by the joint conference board, and its decision shall be final and binding upon all parties to this agreement.

"8. Joint conference board: Both parties to this agreement hereby agree to recognize and abide by the decisions of the joint conference board created under the terms of the joint agreement between the Building Construction Employers' Association and the Chicago Building Trades Council, of which the parties to this agreement are members. Should a dispute arise between either party to this agreement and any other body of employers or employes, and the parties in controversy are unable to adjust the same, said dispute will at once be taken up and decided by the joint conference board.

"9. Power of board: The joint arbitration board shall have full power to enforce this agreement entered into between the parties hereto and to make and enforce all lawful working rules governing both parties. No strikes or lockouts shall be resorted to pending the decision of the joint arbitration board or the joint conference board.

85 "10. Time of meeting: The joint arbitration board shall meet upon seventy-two hours' notice to transact business, upon written request of either party hereto, unless otherwise provided for in this agreement.

"11. Rules of procedure: When a dispute or grievance arises between a journeyman and his employer (parties hereto) the question at issue shall be submitted in writing to the presidents of the two organizations, and upon their failure to meet within forty-eight hours and agree and settle it, or, if one party to the dispute is dissatisfied with their decision, it shall then be submitted to the joint arbitration board at their next meeting. They shall hear the evidence and decide in accordance therewith. All verdicts shall be decided by a majority vote, by secret ballot, be rendered in writing and be final and binding upon both parties. If the joint arbitration board is unable to agree, the umpire shall be requested to sit with them, and after he has heard the evidence, cast the deciding vote. In the event of any dispute or grievance arising between the officers, business agents, or individual members of the party of the second part and their employers, party of the first part, or their officials or individual members for any cause whatsoever, there shall be no cessation or abandonment of the work on the part of either party to this agreement or any of their members, individually or collectively, but such grievance or dispute shall be settled as provided for in articles 2, 8, and 11 of this agreement.

"12. Power to summon members: The joint arbitration board has the right to summon any member or members affiliated with either party hereto against whom complaint is lodged for breaking this joint arbitration agreement or working rules, and also to appear as witness. The summons shall be handed to the president or sec-

retary of the association or union to which the member belongs, and he shall cause the member or members to be notified to appear before the joint arbitration board on the date set. Failure to appear when notified, except (in the opinion of the board) valid excuse is given, shall subject a member to a fine of twenty-five dollars for the first default, fifty dollars for the second, and suspension for the third.

"13. Salary: The salary of a representative of the joint arbitration board shal' be paid by the association or union he represents.

"14. Stopping of work and penalties: No member or
86 members affiliated with second party shall leave his or their work because non-union men in some line other than that of building construction work are employed on the building or job or because non-union men in any line of work or trade are employed (except on building construction work) on any other building or job; or stop, or cause to be stopped, any work under construction for any member or members affiliated with the first party, except as provided in this agreement, under penalty of a fine of not less than twenty-five dollars. Any member or members affiliated with either of the two parties hereto violating any part of this agreement or the working rules established by the joint arbitration board shall be subject to a fine of from ten to two hundred dollars, which fine shall be collected by the president of the association or union to which the offending member or members belong, and by him paid to the treasurer of the joint arbitration board not later than thirty days after the date of levying the fine.

"15. Collection of penalties and suspension: If the fine is not paid by the offender or offenders, it shall be paid out of the treasury of the association or union of which the offender or offenders were members at the time the fine was levied against him or them, and within sixty days from date of levying same, or in lieu thereof the association or union to which he or they belong shall suspend the offender or offenders and officially certify such suspension to the joint arbitration board within sixty days from the time of fining, and the joint arbitration board shall cause a suspension decree to be read by the president of both the association and the union at their next regular meeting. No one who has been suspended from membership in the association or union for neglect or refusal to abide by the decision of the joint arbitration board can again be admitted to membership except by paying his fine or by unanimous consent of the joint arbitration board. All fines assessed by the joint arbitration board and collected during the year shall be distributed as provided for in article 14 of the working rules.

"16. Abandonment of work: The abandonment of work by the individual members of the party of the second part, either separately or collectively, by concerted or separate action, on any building or buildings, being constructed by or for any member of
87 party of the first part, will be considered a breach of this

greement, unless the party of the second part, upon demand, urnishes within twenty-four *hours* (24) hours an equal number of ompetent men for such work.

"17. Scarcity of help: If after forty-eight hours' notice to the arty of the second part they are unable to furnish to all members of arties of the first part a required number of mechanics, then the arty of the first part shall be entitled to procure and employ the nen required. Such men shall be affiliated with the international nion of whom the party of the second part is a part and shall be menable to the rules and regulations of the local union of the party f the second part.

"18. Quorum: Two-thirds of the members present (but not less han two of any one party) shall constitute a quorum in the joint rbitration board, but the chairman of each of the two arbitration ommittees shall have the right to cast a vote in the joint arbitration oard for any absent member of his committee.

"19. Foreman: The foreman, if any, shall be selected by and be he agent of the employer. He shall be a competent mechanic in his rade and subject to the terms of this agreement and its working ules and decisions of the joint arbitration board.

"20. Steward: The steward, if any, shall represent the journeyman. He shall be elected by and from among the men in his trade working on the same building or job, and shall while acting as steward be subject to the rules and decisions of the joint arbitration board. No salary shall be paid to a journeyman for acting as steward. He shall not leave his work or interfere with workmen during working hours. He shall always while at work carry a copy of the working rules with him.

"21. Rights of presidents to visit jobs: The presidents or their representatives, carrying proper credentials, shall be allowed to visit jobs during working hours to interview the contractor, steward, or men at work, but shall in no way hinder the progress of the work.

"22. Handling of tools, etc.: The handling of all tools, etc., working machinery, and appliances shall be done by members parties to this agreement and helpers in the trade who are using same in their work.

"23. Holidays: The following days (or days celebrated as such) shall be recognized as legal holidays: New Year's Day, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day. No work shall be done on these days except to protect life or property.

"24. Affiliations: Both parties to this agreement hereby agree that they will not affiliate or connect themselves with any other body whose rules or by-laws, now or in the future, conflict with this agreement.

"25. Conflicting rules: No by-laws or rules conflicting with the arbitration agreement or working rules agreed upon shall be passed

or enforced by either party hereto against any of its affiliated members.

"26. Termination of agreement: It is agreed by both parties that this agreement shall remain in full force and effect from the date of the same to May 31, 1921. Parties to this agreement further agree that the joint arbitration board shall meet and complete a new agreement on or before February 1, 1921.

"Working rules

"Article I

"Hours

"Eight hours shall constitute a day's work, between the hours of 8 a. m. and 5 p. m., except on Saturday, when the work shall stop at twelve o'clock at noon, with four hours' pay for that day.

"Article II

"Overtime and holidays

"Double time shall be paid for all work done after the regular work day, and there shall be an intermission of not less than thirty minutes before resuming work, unless otherwise ordered by either of the two presidents. Double time shall be paid for all work done from 12.30 Saturday noon until Monday morning, 7.30, and the following six holidays, or days celebrated as such: Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day, and New Year's Day. Sunday and holiday time to cover any time during the 24 hours of said calendar days.

"No work shall be done between 12.30 Saturday noon and
89 7.30 a. m. Monday and all holidays without a permit from the Carpenters' District Council on Saturday morning. Party of the first part shall at once be notified by both telephone and letter of the issuing of any such permits, and they shall also be reported at the next regular meeting of the joint arbitration board, giving the name of the employer, location of job, and number of men employed.

"Article III

"Extra shifts

"When work is carried on in two or more shifts, the second and third shifts shall receive eight hours' pay for seven hours' work; any less than seven hours to be considered as overtime, unless owing to bad weather or conditions beyond the control of the contractor. The same men shall not work on more than one shift. Double time for all Sundays and above-mentioned holidays.

"Article IV

"Labor Day

"No work shall be done on Labor Day, except by written consent of the two presidents.

"Article V

"Wages

"The minimum rate of wages until May 31st, 1921, shall be 80 cents per hour, payable in currency of the United States.

"The party of the second part shall receive the wages agreed upon by the joint arbitration board in this trade under all circumstances. It is further agreed by the parties of the first part to hire no one in this trade, except to whom he or they shall pay the wages agreed upon by the joint arbitration board.

"Article VI

"Pay day

"It is agreed that the workmen shall be paid on Saturday of
90 each week, except when the regular pay day is a legal holiday, in which case the contractor shall pay the day before or the day after the regular pay day, and not later than quitting time.

"The wages to be paid in full up to and including the Thursday night preceding pay day. When the workmen quits of his own accord he shall receive his pay on the next regular pay day. When a man is discharged or laid off, he shall be paid either in cash on the work or be given a time check with four hours extra added for traveling time. Said extra hours to be added by the person giving the time check, which shall be paid on presentation at the office of the employer; and if it is not paid promptly upon his arrival at the office, and if he remains there during working hours, he shall be paid the minimum wages for such waiting time, Sundays and holidays excepted.

"When a man is hired and reports for work, unless prevented by weather conditions or lack of material, he shall be paid not less than four hours' pay.

"Every contractor shall provide a safe place for storing workman's tools on each job, and if any complaint comes from the steward on the job, it shall be investigated by the two presidents or their representatives, and if they can not agree, same shall at once be taken up by the joint arbitration board after notice to the contractor either by the two presidents or their representatives, or the joint arbitration board, that a safe place has not been provided, then the contractor shall pay fifty per cent of any loss sustained by workmen by reason of loss sustained for stolen tools.

"Article VII

"No contractor party of this agreement will sublet the erection of any of his carpentry or any part thereof, except stair work.

"When stair work is sublet it is to be let directly to the manufacturer. Nor will any journeyman who is affiliated with the party of the second part work for any person who takes piece or lump work in any shape or manner. Neither will any journeyman work for any employer at carpentry who is not a member of the original parties to this agreement, unless such employer shall have come to the joint arbitration board and shall have read and voluntarily
91 signed this agreement as party of the first part and agrees to be bound thereby the same as any member of the first party hereto.

"Upon doing this the joint arbitration board will issue a certificate for the life of this agreement and for which a fee $50.00 will be charged to be paid to the treasurer of the joint arbitration board to help defray expenses of the joint arbitration board and if there should be any left at the expiration of this agreement, after paying all necessary expenses incurred by the joint arbitration board, same shall be divided between the Carpenter Contractors' Association and the Carpenters' District Council.

"All employers will post conspicuously the name and address of the employer on the building or job where any members of the second party is employed.

"It is agreed that no contractor or any member of any contracting firm parties hereto will use tools on any job.

"Article VIII

"Any member of the second party to this agreement who is, or desires to become a contractor shall first sign this agreement in duplicate, as party of the first part, and shall then obtain a certificate from the joint arbitration board to such effect, without cost to him, which certificate shall be surrendered upon such member going back to work as a journeyman.

"Article IX

"Material

"It is mutually agreed that the party of the first part will furnish all of the material in the erection and completion of all buildings and jobs. Any violation of this article will subject the party of the first part to a fine of from three hundred ($300.00) to one thousand ($1,000.00) dollars.

"Article X

"Carpenter work described

"The party of the second part will furnish all the labor required for carpenter work in the erection and completion of all build-

92 ings and jobs. False work, floors, framing, centers for all arches (except hanging centers for tile fireproof arches without reinforced concrete) all sidewalk and building protection, boxing for concrete walls and piers, fitting and hanging of sash, transoms, and doors, cutting, fitting, and applying all hardware, weather strips, copying and mitering base, chair rail, and plate rail, cutting, nailing, and screwing in all stops, building and erecting all stairs, including all bench and machine work; also, all soffits, paneling, wainscoting, and railing, all seats, beams, columns, and pilasters connected with the stairs. The setting and erection of all metal covered trim or doors, and all hollow steel trim or door, stripping for metal ceilings, boxing for metal cornices, all cork for floors and insulation (where same is not laid in mortar). All dock pier wharf shipbuilding and pile driving. All millwright work transit asbestos, wood, beaver board and shingles shall be covered by this agreement.

"Article XI

"Working conditions

"The party of the second part will not work with carpenters, except they are affiliated with the Carpenters' District Council. No member or parties to this agreement shall work on any building or job where laborers or any other trades are permitted to do carpenter work of any kind.

"Article XII

"Steward

"Wherever two or more journeymen, members of the second party, are working together, a steward shall be selected by them from their number to represent them, who shall, while acting as steward, be subject to the rules and decisions of the joint arbitration board.

"The steward's book shall be open to inspection by the presidents or their representatives.

"The steward shall not be discharged for the performance of his duties as prescribed in this agreement.

93 "Article XIII

"Meetings

"The joint arbitration board shall meet to transact routine business on the first Thursday in each month, but special meetings shall be called on one day's notice by the presidents of the two organizations or upon application of three members of the joint arbitration board.

"Article XIV

"Fines as result of arbitration

"Any person, firm, or corporation parties hereto violating any part of the agreement or working rules established by the joint

arbitration board shall be subject to a fine of from ten to two hundred dollars for each violation.

"Other parties to this agreement shall pay fines direct to the treasurer of the joint arbitration board.

"In no case shall the parties hereto be permitted to employ or work for anyone who has been found guilty of violating any part of this agreement if said fine is not paid to the treasurer of the joint arbitration board within five days after the date of levying the fine.

"Article XV

"The joint arbitration board shall pay all necessary expenses out of the treasurer of the joint arbitration board.

"The treasurer of the joint arbitration board shall, if required, make a report to the board of the funds in his hands at any regular meeting.

"All funds in the hands of the treasurer after deducting the expenses of the board shall be divided equally between the Carpenters' District Council and the Carpenters Contractors' Association of Chicago at the expiration of this agreement.

"The treasurer of the joint arbitration board shall, before entering upon his duties, file with the president of the joint arbitration board a bond of indemnity from a surety company and to be
94 payable to the joint arbitration board, the amount to be determined by the joint arbitration board.

"Article XVI

"No person, firm, or corporation parties hereto will work on or take a contract for any building or job where there remains money due to any member of either party to this agreement, or on which there is any unsettled dispute affecting any member of either party to this agreement without written consent of the joint arbitration board.

"Carpenter apprentices

"Apprentice rules adopted by the joint arbitration board of the Carpenter Contractors' Association of Chicago and the Carpenters' District Council of Chicago, Cook County, and vicinity.

"Article XVII

"Section 1. Each responsible party to this agreement shall have the right to teach his trade to apprentices, and the said apprentices shall serve four years, as prescribed in the apprentice rules as agreed upon by the joint arbitration board, and shall be subject to the control of the said arbitration board.

"Section 2. Apprentices shall be under the jurisdiction of the joint arbitration board, which has the authority to control them and protect their interests, subject to approved indentures entered into with their employers and the rules adopted by the joint board.

"Section 3. The applicant for apprenticeship shall not be more than 17 years of age at the time of making application, except under conditions satisfactory to the two presidents. Applicants more than 17 years old must bring satisfactory proof of having worked at the trade.

"Section 4. The contractor taking an apprentice shall engage to keep him at work in the trade for nine consecutive months in each year and see that during the remaining three months in each
95 year the apprentice attends school during January, February, and March, and a certificate of attendance from the principal of the school attended must be furnished the joint arbitration board as a compliance with this requirement before he is allowed to work during the coming year.

"Section 5. A contractor taking an apprentice shall keep him steadily at work or school; failing to do so, he shall pay him the same as though he had worked for him.

"Section 6. In case an apprentice at the end of his term of four years for want of proper instruction in the trade is not a proficient workman, and if after a thorough investigation the joint arbitration board finds the contractor to whom he was apprenticed did not give him proper instruction and an opportunity to learn his trade, he may be required to serve another year, with whom he and the joint arbitration board may determine, and at a rate of wages (less than the minimum) in his trade they may determine, and the difference between that rate and the minimum scale in his trade shall be paid him through the joint arbitration board by the contractor to whom he was apprenticed.

"Section 7. A contractor entitled to an apprentice may take one on trial for two weeks, provided that applicant holds a permit from the joint arbitration board, and if after said trial conditions are satisfactory to both parties they will be required to sign indentures agreeable to the joint arbitration board. If not satisfactory the contractor is not bound to indenture him, but he will be required to pay the boy $8.00 per week for the two weeks. No boy will be allowed a trial with more than two contractors, or a contractor with more than two boys consecutively.

"Section 8. The rate of wages of an apprentice at the date of indenture shall in no case be less than four hundred and sixteen dollars for the first year, four hundred and ninety-four dollars for the second year, five hundred and seventy-two dollars for the third year, seven hundred and twenty-eight dollars for the fourth year, payable in lawful money of the United States, and shall be paid in fifty-two weekly installments at the following rate per week of: Eight dollars for the first year, nine dollars and fifty cents for the second year, eleven dollars for the third year, and fourteen dollars for the fourth year.

96 Section 9. The issuing of permits for an apprentice to work for another contractor when the one to whom he is apprenticed has no work shall be left to the joint arbitration board.

"Section 10. The contractor shall not have more than two apprentices at any one time.

"Section 11. Contractors shall be allowed apprentices on the following basis: Yearly average of four journeyment, one apprentice. Yearly average of ten journeymen, two apprentices.

"Section 12. The apprentice upon completing his indenture shall report to the joint arbitration board and shall, after furnishing said board with satisfactory proof of his competence as a skillful mechanic in his trade, receive a certificate approved by the board which shall entitle him to a journeyman working card.

"Article XVIII

"It is further agreed by and between the parties hereto that power shall be vested in the joint arbitration board to interpret the spirit as well as the letter of this agreement, and in order to maintain justice and equity between the parties hereto, the joint arbitration board is hereby given power to enforce the spirit as well as the letter of this agreement.

"Article XIX

"Termination

"It is agreed by the parties to this agreement that it shall be in force between the parties hereto until May 31st, 1921.

"On behalf of the parties of the first part, the Carpenter Contractors' Association of Chicago.

"D. H. DOYLE, *Pres.*
"A. C. WEHRWEIN.
"FRANK E. DOHERTY.
"WILLIAM J. SCOWN.
"FRANK M. STRESENREUTER."

97 On behalf of the parties of the second part, the Carpenters' District Council of Chicago, Cook County, and Vicinity.

"WM. BRIMS, *Pres.*
"WM. C. WHITE.
"W. G. SCHARDT.
"THOS. F. FLYNN.
"D. J. RYAN, *Secy.*

"Dated at Chicago _____ day of _____ 1918
"Signed _____
(Employer)
"Address _____"

Minutes of March 27th, introduced as Government's Exhibit 36 (whereupon the document referred to was marked "Government's Exhibit 36" and received in evidence).

Minutes of May 8th, introduced as Government's Exhibit 37 (whereupon document was marked "Government's Exhibit 37" and received in evidence).

Minutes of October 9th, introduced as Government's Exhibit 38 (whereupon document was marked "Government's Exhibit 38" and received in evidence).

Minutes of January 8, 1919, introduced as Government's Exhibit 39 (whereupon document was marked "Government's Exhibit 39" and received in evidence).

Minutes of March 12th, 1919, introduced as Government's Exhibit 40 (whereupon document was marked "Government's Exhibit 40" and received in evidence).

Minutes of May 14th, 1919, introduced as Government's Exhibit 41 (whereupon document was marked "Government's Exhibit 41" and received in evidence).

Mr. SHALE (reading):

"Government's Exhibit 36

"The special meeting of the Carpenter Contractors' Association was held in the Chamber of Commerce on Wednesday, March 27th, 1918, at 2 p. m.

98 "Reading of the agreement which had been agreed upon by a committee of the Millmen's Association and a like committee of the Carpenter Contractors' Association, and after some discussion it was moved by Mr. Green that the agreement as drafted by the committee of the Millmen's Association and the Carpenter Contractors' Association be accepted.

"After considerable discussion it was moved and seconded that the previous motion be laid on the table. A rising vote was called for by the chair, and the vote stood 68 for and 3 against.

"Section 3 of article 3 was the next order of business.

"Moved and seconded that we stand by our motion, which was carried at a previous meeting with reference to section 3 of article 3. On a rising vote it stood 47 for and 25 against.

"The minutes are signed by H. J. Cohlgraff, secretary."

Government's Exhibit 37

The regular meeting of the Carpenter Contractors' Association was held in the Chamber of Commerce on Wednesday, May 8th, 1918, at 2.00 p. m.

Mr. Doyle reported on the progress of the meeting by the committee, acting with a like committee from the Millmen's Association, and the secretary read the legal opinion by Mr. Elmer Adams, an attorney, whose opinion it was that all of the articles as drawn in the agreement, with the exception of article 4, would come within the law.

Motion was then made by Mr. Brockob and seconded by Mr. Solomon that the agreement be accepted as drawn, with the exception of article 4.

Government's Exhibit 38

Regular meeting of Carpenter Contractors' Association was held in the Chamber of Commerce Wednesday, October 9th, 1918, at 2.30 p. m.

Mr. Doyle, chairman of the committee appointed to meet with the mill owners, stated they had come to an understanding about four months ago, but the agreement has not been put in force, as the mill owners asked to postpone for a time the putting into effect of the agreement until they had time to build up their organization, as they only had about 50% in their association and wanted to wait
99 until they got about 85% of the production of the mills in their association. I told them they would have to set a certain date, so we finally agreed to grant them further delay until January 1, 1919. In the meantime they sent a request to the association to help them in trying to build up their organization.

Government's Exhibit Number 39

The regular monthly meeting of the Carpenter Contractors' Association was held in the Chamber of Commerce on Wednesday, January 8th, 1919, at 2.00 p. m.

Mr. Doyle stated there had been a meeting with the millmen relative to putting the agreement into effect, and that they were working on that now, and no doubt it would be brought to an issue in about a week. He stated the main part of the agreement was practically settled by that contract and ways and means of putting it into force was what they were working on now.

These minutes are signed by H. J. Cohlgraff.

Government's Exhibit Number 40

The regular monthly meeting of Carpenter Contractors' Association was held in the Chamber of Commerce on Wednesday, March 12th, 1919.

The secretary read the proposed agreement between the millmen and the Carpenter Contractors' Association.

President Doyle stated that this agreement was concurred in by the trades relation committee of the association and the committee from the Mill Men's Association and that it was open for discussion.

Mr. Doyle brought up the question of trying to get the independent carpenter contractors to join the association. He stated that he thought after the agreement with the millmen had gone into effect that many of them would wish to join, and perhaps it would be a reasonable thing to eliminate the initiation fee if we got them to come into this association in a body.

He also stated that we already had received twenty five dollars of this amount from the arbitration board as we received one half of the balance and the district council the other half.

These minutes were signed by H. J. Cohlgraff, secretary.

100 Government's Exhibit No. 41

The regular meeting of the Carpenter Contractors' Association held May 14th, 1919, at 2.00 p. m. in the Chamber of Commerce Building.

Mr. Doyle stated that we had been dealing with the millmen for some time and had finally consummated an agreement.

Minutes signed by H. J. Cohlgraff, secretary.

Witness states that Mr. Ryan was secretary of the arbitration board; that Mr. Ryan always gave him a copy of the minutes; that the book he has in his hands constitute the minutes of the board of arbitration. Government introduces the minutes of the meeting of the arbitration board of January 3d, 1918, as its Exhibit No. 42 (whereupon said document was marked "Government's Exhibit No. 42," and received in evidence).

Government introduces minutes of meeting of February 7th, 1918, as Exhibit No. 43 (whereupon said document was marked "Government's Exhibit No. 43," and received in evidence).

Government introduces minutes of meeting of March 14, 1918, as Exhibit No. 44 (whereupon said document was marked "Government's Exhibit No. 44," and received in evidence).

Government introduces minutes of meeting of April 9, 1918, as Exhibit No. 45 (whereupon said document was marked "Government's Exhibit No. 45," and received in evidence).

Government introduces minutes of meeting of April 12th, 1918, as Exhibit No. 46 (whereupon said document was marked "Government's Exhibit No. 46," and received in evidence).

Government introduces minutes of meeting of May 7th, 1918, as Exhibit No. 47 (whereupon said document was marked "Government's Exhibit No. 47," and received in evidence).

101 Mr. SHALE:

Government's Exhibit Number 42

The regular meeting of the joint arbitration board was held in room 1318, Chamber of Commerce Building, with the following members present: D. H. Doyle, A. C. Wehrwein, Frank E. Doherty, William Brims, W. C. White, W. G. Schardt, T. F. Flynn, and D. J. Ryan.

The question of a new agreement was taken up and discussed at some length, and Mr. Doyle stated that they were unable to get together with the mill and lumber people to settle some other disputes, but will have a meeting with them this week.

The minutes were signed by D. J. Ryan, secretary.

Government's Exhibit 43

The regular meeting of the joint arbitration board was held on Thursday, February 7th, 1918, and the following members were

present: D. H. Doyle, F. M. Stresenreuter, A. C. Wehrwein, William Brims, William C. White, W. G. Schardt, D. J. Ryan.

The propesed new agreement was taken up for consideration, and after some discussion Mr. Doyle requested that owing to two of his members, Mr. Doherty and Mr. Anderson being absent, we should defer further action on the agreement until after the next meeting of his association is to be held on February 13th.

Government's Exhibit Number 44

Special meeting of the joint arbitration board was held in room 1318, at 133 West Washington Street, March 14, 1918.

The meeting was called to order by Mr. Doyle at 11.00 a. m. The following were present: D. H. Doyle, William J. Scown, F. E. Doherty, William F. Brims, W. G. Schardt, A. C. Wehrwein, William C. White, D. J. Ryan.

This meeting was held for the purpose of signing up the
102 proposed new agreement as agreed upon by the arbitration board from both parties and submitted to a vote of both organizations.

The request of the contractors to change section 3 of article 3 to read as it now stands in the old agreement was taken up and as the proposed change in this article has been voted upon as a whole by the carpenters and carried, we are unable to change any part of same now.

The minutes were signed by D. J. Ryan, secretary.

Government's Exhibit Number 45

The regular meeting of the joint arbitration board was held in room 1318, 133 W. Washington Street, Tuesday, April 9th, 1918.

Meeting called to order by Mr. Doyle.

Following persons were present: D. H. Doyle, H. G. Wehrwein, W. G. Schardt, William J. Scown, Thomas F. Flynn, F. E. Doherty, William C. White, and D. J. Ryan.

The Chair reported that the contractors had taken up the proposed agreement at their last meeting and had voted against the adoption of same on account of section 3 of article 3. He also stated: "This will be our final meeting on this agreement," and hoped something might be brought about to make the agreement satisfactory to all concerned. He was informed by Mr. Brims that this will be our final meeting if the proposed agreement is again turned down by the association.

Mr. Doyle then submitted the following as a substitute for article 3 of section 3: "There shall be no restrictions against the use of any manufactured material, except nonunion and prison-made. This shall not apply to machine-made floor, ceiling, or ceiling partitions, planed lumber or timber, or hardware of any kind."

After considerable discussion on the proposal as submitted in place of section 3 of article 3, motion made and carried that a sub-

stitute for the article as it now reads in the proposed new agreement will be acceptable to the joint arbitration board.

Minutes signed, D. J. Ryan.

103 Government's Exhibit 46

Special meeting of the joint arbitration board was held in room 1318, 133 W. Washington Street, Friday, April 12th, 1918, at 12.00 o'clock noon. The following members were present: D. H. Doyle, William J. Scown, William C. White, D. J. Ryan, A. C. Wehrwein, Frank M. Stresenreuter, William G. Schardt, F. E. Doherty, William Brims, and Thomas F. Flynn.

This meeting was called for the purpose of signing of the agreement which has been adopted by the joint arbitration board and approved by the Carpenter Contractors' Association and the Carpenters' District Council and local unions.

The agreement was then taken up and the construction of section 3 was discussed at considerable length, and some corrections made in article 10, inserting after the word "mortar" or "dock, top pier, wharf, shipbuilding and pile driving." After a satisfactory explanation on all points raised by both parties, motion was made and carried that we sign the agreement as it now stands.

Mr. Flynn declined to put his signature to it until Monday morning.

The agreement was then signed by D. H. Doyle, A. C. Wehrwein, William J. Scown, F. E. Doherty, Frank M. Stresenreuter, William Brims, W. C. White, W. G. Schardt, and D. J. Ryan.

The secretary was instructed to have the agreement printed, together with all necessary certified cards, and prepared for signatures of all contractors and builders.

The minutes were signed by D. J. Ryan, secretary.

Government's Exhibit Number 47

The regular meeting of the joint arbitration board held in room 1318, Chamber of Commerce Building, May 7th, 1918.

Meeting called to order by Mr. Doyle, chairman, with the following members present: D. H. Doyle, William F. Brims, Thomas F. Flynn, William J. Scown, W. G. Schardt, D. J. Ryan, A. C. Wehrwein, W. C. White.

104 The minutes of the previous meeting held April 13th, 1918, were read and approved.

The Mill Men's Association appeared before the board and requested an understanding as to the material now on hand and in storage in the various mills in Chicago and vicinity.

Motion made and carried that the Carpenters' District Council furnish a special stamp as follows:

"O. K. Carpenters' District Council of Chicago, Cook County and vicinity." This stamp to be placed on all material under the fol-

lowing conditions. All contracts let or taken or material bought previous to May 1st, 1918, and all material now on hand and purchased under contract up to May 1st, 1918, has been stamped by the shop stewart. The stamp shall be returned to the Carpenters' District Council. Signed. D. J. Ryan, secretary.

Mr. FOWLER. We submit the witness for cross-examination, your Honor.

Cross-examination by Mr. McKinley

States that there were some members of the Carpenter Contractors' Association who lived outside of the city of Chicago and did not do work in Chicago; that he believed Messers. Peterson and Weeks lived in Oak Park; doesn't know whether or not they are in Waukegan; that they had many members from Waukegan and Lake County and some from various cities in Cook County, not included in the corporate limits of Chicago, such as LaGrange, Oak Park, Evanston, and Chicago Heights; that the agreement as read by Mr. Shale comprised Chicago, Cook County, and vicinity. He doesn't just know what the word "vicinity" means. He believes he was present at all the meetings, the minutes of which were read to the jury; he did not make notes himself at the meetings or of any meeting of which he was secretary. The minutes were prepared by the stenographer who was present and after they were written up he signed them.

Attention of witness called to meeting of April 10th, 1918, Government's Exhibit 34, as follows:

"Section 3 of article 3 was the next order of business and the Chair asked the secretary to read the new section as agreed to by the board of arbitration, "there shall be no restriction against the use of any manufactured material except nonunion or prison-
105 made. This shall not apply to machine flooring, ceiling, or ceiling partitions, planed lumber or timber, or hardware of any kind.

"Mr. Ashbeck moved we stand by the motion made at the previous meeting with reference to section 3 of article 3. The Chair asked for a secret ballot."

"He says he would call the ballot taken there a written ballot; that those present were handed a slip of paper and wrote the word "Yes" or "No" on it. The Chair appointed tellers, who counted the ballots—there was nothing secret about that. It was an open meeting, and the minutes show it was an open meeting. He did not attend any of the meetings of the joint arbitration board and knows nothing about the minutes or their correctness. He believes the contractors' association voted down any change in article 3—three or four times; that the reason they voted it down was because some of the contractors felt that they had contracts or had just signed contracts with owners and had placed contracts of purchase with mills outside of the city of Chicago, and felt they were losing money if such an agreement was made. Says that while he was secretary

of the contractors' association and prior thereto he had been a contractor in the city of Chicago for about twelve years and was actively engaged in the contracting business; that he did carpenter contracting. During this time he had occasion to purchase millwork in Chicago—to his knowledge he purchased all of it in Chicago—there was no restriction against his purchasing material outside. He doesn't know who wanted article 3 changed, and he knew of no contractor a member of the association that did want it changed. He did not know of any of the following men who wanted it changed: D. H. Doyle, Mr. Wehrwein, Mr. Scown, Mr. Doherty, Mr. McGimsie, or Mr. Stresenreuter. To his knowledge, none of them ever expressed a desire to change article 3 to him personally. He heard these men whose names were mentioned talk on the floor against a change of article 3. He believes the original article 3 went into effect back in 1900. He doesn't know who formulated the eight cardinal principles in article 3. He doesn't know the history of them—he has no copy of the eight cardinal principles.

He says that article 1, "There shall be no limitations as to the amount of work a man shall perform during his working day," had been in all agreements with the union, as far as he knew.
106 That article 2, "there shall be no restriction of the use of machinery or tools," had always been in the agreement before; the same with article 3—"there shall be no restrictions against the use of any manufactured material, except prison made," which had been in the agreement from 1902 down to 1918. That when the agreements were expiring or about to expire there had been meetings to change it; that the Carpenters' District Council made an effort to change it and that the Carpenter Contractors' Association always voted against changing it, and they were successful in their fight each and every time the agreement expired. In 1918 the Great War was on and there was a shortage of mechanics at that time. Contractors were not able to get all the journeymen carpenters they wanted for building at that time on account of the shortage. He presumes many of them were working for the Government. States that a proposition was made prior to the present agreement to change article 3 at each and every time from 1900 down to 1918, when the agreements were expiring; that the proposition came from the Carpenters' District Council. Says that section 4 of the cardinal principles, "that no person shall have the right to interfere with workmen during working hours," was in the agreement from 1900 on; also section 5, "that the use of apprentices shall not be prohibited"; also section 6, "that the foreman shall be the agent of the employer"; also section 7, "that the workmen are at liberty to work for whomsoever they see fit, but they shall demand and receive the wages agreed upon by the joint board in this trade under all circumstances"; also section 8, "that employers are at liberty to employ and discharge whomsoever they see fit." The contractors'

association in the beginning of the year 1918 had about five hundred members—they were general contractors and carpenter contractors. The five hundred did not include all the carpenter contractors in the city of Chicago. He doesn't know how many carpenter contractors there were in the city of Chicago at that time. The arbitration board was composed of ten members, five of them being from the union side and five being from the contractors' side; the five contractor members were elected annually by the association; that is, it was a continuing body; two were elected one year and three the next year and the president was ex officio a voting member of the arbitration committee. He believes the Carpenters' District Council
107 followed the same method in electing their members of the arbitration board; they met in accordance with the agreement, once each month and oftener if necessary. The agreement provides how the board shall organize itself, and the agreement heretofore read provides for such an organization. It was customary to elect a president of the board, and since his membership in the Carpenter Contractors' Association the president has always been the president of the Carpenter Contractors' Association. He doesn't know who was usually elected secretary of the board, but that Mr. Ryan was secretary; that Mr. Dan Galvin was secretary of the Carpenter's District Council and Mr. Ryan was elected to the arbitration board on the union side and was appointed secretary of the arbitration board—the union side always did have the secretary. The arbitration board had their regular meetings each month, and any particular question that arose during that month they would look into and discuss. He doesn't know any of the questions that arose, as he was not a member; their main purpose was to formulate a working agreement with the union—that is, between the union and the contractors. The arbitration board had to go back to their respective associations for authority on labor agreements; that is, the arbitration board in itself could not formulate an agreement that would be binding on either party. It would have to be referred back to the contractors' association and likewise to the union. It was referred back to the contractors' association three or four times, he doesn't just recall, until the meeting of March 12th—it was passed April 12th. The day it was passed there were about sixty or seventy votes cast. It was a small meeting, the average attendance being about one hundred or one hundred and fifty.

He was at all the meetings of the Carpenter Contractors' Association during the period covered by the minutes already introduced in evidence and acted in the capacity of secretary. He was present at the meeting of January 9th, 1918, which minutes show that article 3 of the present agreement should remain intact, which meant that article 3 was to be kept intact as in previous years; that is, there shall be no restrictions to any manufactured material except prison-made material. The association approved leaving it as it was at that meeting.

Mr. FOWLER. That speaks for itself.

108 The COURT. Well, the minutes show that, don't they?

Mr. MCKINLEY:

Q. Now, the next meeting, on March 13, 1918, did Article III come up for discussion again at that meeting?

Mr. FOWLER. Your Honor, I dislike to object. Those minutes all show the exact facts, how they were, and they have all been read.

The COURT. The minutes speak for themselves, don't they?

Mr. MCKINLEY. Yes; but there are some things I would like to explain in the minutes, and bring clearly before the jury what the fact was.

The COURT. Is there any objection to that, on cross-examination?

Mr. FOWLER. I say, if there is any explanation——

The COURT. You are not getting any explanation. Now, what is the question?

Mr. MCKINLEY. What is the question, Mr. Reporter?

(Question read.)

The COURT. Answer yes or no.

A. Yes.

Mr. MCKINLEY:

Q. And you were present at the meeting?

A. Yes, sir.

Q. And any change in Article III was rejected?

A. Yes, sir.

Mr. FOWLER. Now, the minutes there speak for themselves.

The COURT. Certainly. The minutes speak for themselves, of course. I don't get counsel's idea.

Mr. MCKINLEY. Very well. I would like to get before this jury an exact picture of what took place, and this is the only method I know of, of doing it.

The COURT. What is the question he asked last?

(Last question read.)

The COURT. Don't the minutes show that it was?

Mr. FOWLER. Why, of course, and it has been read.

Mr. MCKINLEY:

Q. Now, when the agreement was finally passed as to the change of Article III, what was done with it?

When the agreement was finally passed as to the change in article 3, it was sent back to the arbitration board and signed, and after they signed it it was printed, copies made of it and distributed, about two thousand copies being printed. It was distributed generally

109 among the contractors throughout Chicago and elsewhere. It was called "A joint agreement between the Carpenter Contractors' Association and the Carpenters' District Council of Chicago. It was not published in a yearbook. The agreement went into effect May 1st, 1918, and expired May 1st, 1921. It was lived up to as far as the Carpenter Contractors' Association was concerned.

There was a strike during the life of this agreement on account of the wage scale, which occurred in 1919. The wage scale at that time, as mentioned in the agreement, was 85 cents an hour, and in 1919, after a ballot, the wage scale was raised to $1.00 per hour. The wage scale was changed again in 1920 to $1.25 per hour.

The Contractors' Association protested against the change each and every time. The strike in 1919 lasted about two months, and it was finally compromised by giving the unions what they asked for originally. No strike occurred in 1920; the wages were just changed. The questions that would come up before the arbitration board for determination would be questions that might arise outside of the meetings; that is, if a contractor got into difficulty on a job and the union's side claimed he was not living up to the agreement, it would be referred to the arbitration board, and they decided who was right or wrong. Hundreds of such grievances came up, and the arbitration board was a busy tribunal. It held meetings once each month and very often special meetings were called. Mr. Charles Bostrom, building commissioner of the city of Chicago, acted as umpire at these meetings to decide questions if there was a deadlock. Other trades in the building industry at the time covered by this agreement had similar agreements; in other words, all crafts in the building trade had agreements with their employers. There are approximately thirty-six or thirty-seven crafts in the building industry.

Mr. FOWLER. Your Honor, I rather think this whole thing is immaterial. It is immaterial to go into particulars. He said all of them. What is the use of naming them?

The COURT. Yes; I think so.

Mr. MCKINLEY. I would like to get, General, before this jury a picture of the building industry.

Mr. FOWLER. He said "all."

Mr. MCKINLEY. I would like to talk about the things I know, and that is one of the few things I know.

110 The COURT. Well, we want to keep the record down, too; go on.

Mr. MCKINLEY:

Q. Did all of these other crafts have arbitration boards organized similarly to the carpenters' arbitration board?

A. Yes, sir.

Q. And each of them had an umpire in case they were deadlocked?

A. I believe so.

Q. Yes. Do you know the names of some of the other umpires?

A. No; I don't.

Q. Do you know whether Judge Kenesaw M. Landis was a member in any one of them?

A. Yes, sir.

Q. So that it is not, in and of itself, a matter to be ashamed of to be a member of an arbitration board or an umpire?

Mr. FOWLER. I object to that, your Honor. We have never said or insinuated that it was.

The COURT. I think that is improper.

Mr. MCKINLEY. Very well.

Besides the local arbitration board in the building industry there is a higher tribunal known as the joint conference board, and above that is the national board of jurisdictional awards, which is a national body and has the last word. The local arbitration board is the body that interprets the agreements, and their decision is final unless appealed from. There is no agreement now between the contractors' association and the Carpenters' District Council.

Cross-examination by Mr. Fink

States that the proceedings at the meetings of the carpenter contractors were taken down by a stenographer; that is, the motions were taken down, not discussion and not what was said on the floor. The minutes which have been introduced in evidence is a copy of the stenographer's notes.

Redirect examination by Mr. Fowler

In the following part of article 3, "there shall be no re-
111 striction against the use of any manufactured material except nonunion and prison made," and "this shall not apply to machine-made flooring or ceiling or partition and planed lumber, timber, or hardware of any kind"; nothing mentioned therein includes inside trim; neither does it apply to windows or doors. Inside trim might be casings, doors, windows and window casings, stairs, and baseboards. This exception does not apply to any of these things. He remembers no reason for this exception. It was inserted as a kind of a compromise, because we couldn't get anything else. To his knowledge, no prison-made goods were sold in Chicago at all, or ever came into Chicago. Stated the contractors were opposed to article 3; that they voted three or four times on it, and they were so opposed because many of them had already signed contracts but had not purchased their material, and had figured on the price of outside materials. They got material through representatives here from mills outside of Chicago, some of the mills being located at Oshkosh, Wis., Rock Island, Cincinnati, etc. He doesn't know what percentage of doors and windows used in Chicago were shipped from outside mills. He is not so familiar with mill work; has heard members of the association talk about it, but only hearsay.

He was a contractor himself at one time; he quit contracting about seven or eight years ago. He knows as a fact that a large part of the doors and windows used in Chicago were shipped from the outside, and presumes those doors and windows were made by nonunion labor. He heard some of the members of the contractors' association say this material was nonunion made.

Objection by counsel for each of the defendants.

Objection overruled.

Exception by counsel for each of the defendants.

He doesn't recall whether this matter was talked over or not at the meetings; that in those discussions the reason assigned for not wanting article 3 to go into effect, was because it cut them off from purchasing outside material. They said they could get outside material cheaper, and if article 3 went into effect they could not buy it. This arbitration board also negotiated agreements between the union and the Carpenter Contractors' Association, and as a matter of fact it negotiated this very contract.

112 Recross-examination by Mr. Thompson

Stated that article 3 would prevent contractors from purchasing outside material if they wanted to have it erected here in Chicago by union carpenters. It really don't prevent them purchasing the material at all.

Redirect examination by Mr. Fowler

It prevented them from purchasing outside material if they desired to have their millwork put up and erected by union carpenters. There were no carpenters in Chicago outside of union carpenters.

Objection by counsel on behalf of defendants.

Objection overruled.

Exception on behalf of each defendant.

DANIEL GALVIN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

His name is Daniel Galvin; he is a carpenter by occupation and a member of the carpenters' union. There are two divisions of carpenters—that is, outside carpenters who work on buildings and inside carpenters who manufacture material on the inside. They are not divided into different divisions; they all belong to one organization. The meetings are not held jointly. There are six locals of millmen, but any outside carpenter is entitled to be present at their meetings, and vice versa. There are thirty-one locals of outside carpenters. They hold their meetings separate from the inside carpenters, but inside carpenters may attend if they want to. They do not hold joint meetings, to his knowledge. The district council is the governing body of the carpenters of Chicago, Cook and Lake Counties, Illinois. The district council is a delegate body, that is it is composed of delegates from each of the thirty-seven locals, each local being entitled to a delegate for every two hundred members or fraction thereof. Some locals have eight delegates and others two, according to their membership, and this constitutes the district council. Its membership consists of about one hundred delegates.

113 He was secretary and treasurer of the district council prior to July last past, and was for fifteen years. He kept the minutes and they were made up by him; he also kept the notes for the minutes, kept them in longhand. He identifies a book marked on the back "Book No. 3. Records of district council meet-

ings, January 15, 1916, to December 21, 1918," as the book which contains the records of the district council for the period mentioned. He kept it and the minutes are correct.

Government introduces the minutes of the meeting of February 10th, 1917, as Exhibit No. 48; the minutes of March 3d, 1917, as Exhibit 49; the minutes of August 4, 1917, as Exhibit 50; the minutes of December 29th, 1917, as Exhibit No. 51; the minutes of January 26th, 1917, as Exhibit No. 52.

(Which documents so offered were marked "Government's Exhibits Nos. 48 to 52, inclusive," and admitted in evidence.)

Identifies letter dated January 23, 1918, addressed to Mr. Frank Duffy, general secretary of U. B. of C. and J. of A., as a letter written by him, that the writing of the letter fell within his jurisdiction.

Identifies a copy of another letter, dated January 23d, 1918, addressed to Mr. Frank Duffy [handing document to witness], as one sent by him.

Government introduces the first of these letters as Government Exhibit No. 53 and the second one as Government Exhibit No. 54.

Objection by counsel on behalf of union defendants. Objection overruled. Objection on behalf of contractor defendants. Objection overruled.

Which document were accordingly marked and admitted in evidence as "Government's Exhibits 53 and 54."

Government introduces the minutes of February 23d, 1918, as Exhibit 55; the minutes of March 2d, 1918 as Exhibit 56; the minutes of March 9th, 1918 as Exhibit 57; the minutes of March 16th, 1918 as Exhibit 58; the minutes of March 30th, 1918, as Exhibit 59; the minutes of April 6th, 1918, as Exhibit 60; the minutes of April 13th, 1918, as Exhibit 61; the minutes of April 27th, 1918, as Exhibit 62; the minutes of May 11th, 1918, as Exhibit 63.

The COURT. It is understood that all defendants have an exception to every objection made by each defendant.

114 Whereupon the documents so offered were marked and admitted in evidence as "Government's Exhibits Nos. 55 to 63, inclusive."

Mr. SHALE (reading):

"Proceedings of the district council meeting held at Carpenter's Hall, February 10, 1917."

"This is Government's Exhibit 48.

"Meeting called to order by Vice President Brims. Roll call showed president absent. Minutes of the previous meeting approved as read.

"Organization committee presented the following report which was ordered received and concurred in:

"'We have made a thorough investigation of the conditions which exist in the mills of this city. We have visited many of the plants and find some of them actually shut down and many of the others working with greatly reduced forces. Upon inquiring as to the

causes which bring about this state of affairs we were everywhere given the same reason, which is, that material can be bought and shipped into Chicago at prices much lower than are possible with the wage scale which prevails here. With regard to fixtures, we were informed that this class of material can be bought outside, brought into Chicago and installed at a lower price than it would cost to manufacture only, under Chicago conditions. We also visited several very large warehouses where we found immense stocks of sash, doors, etc., all made outside and shipped in, and not one of our men employed in these places.

"'We have been particular to ascertain the cities from which most of this material comes and find that Oshkosh, Wisconsin, is the principal one. We also find a lot of trim coming from the South, but are of the opinion that with Oshkosh organized up to a reasonable scale of wages we would have taken a long step toward bringing the business back to our own mills. We were repeatedly told by the manufacturers that they would much prefer to manufacture the material here if it were possible to come anywhere near the prices at which they buy. We find two or three of the firms are seriously contemplating moving their factories from Chicago.

"'After giving the matter very careful consideration, we recommend that the district council take the matter up with the general office and request that our national officers give this question
115 all the attention possible by assigning an organizer to Oshkosh, and, if possible, to some of the other cities from which we are receiving the closest competition.' (By-law committee reported progress.)"

These minutes were signed by Daniel Galvin, secretary-treasurer.

Government Exhibit No. 49

"Proceedings of the district council meeting held at Carpenters' Hall March 3, 1917. Roll call showed all officers present. Minutes of the previous meeting approved as read. Minutes of the joint arbitration board read and ordered filed.

"President reported on the Saturday afternoon permits granted and stated that in his opinion that if our members would agree to work for the members of the contractors' association only, then we would be assisting the millmen, as the contractors would only use trim bearing our label."

The minute was signed by Daniel Galvin, secretary-treasurer.

Mr. CHILDS. I would like to object for the millmen to the introduction of these minutes as being incompetent, irrelevant, and immaterial.

The COURT. I supposed your objections were all preserved to these minutes.

Mr. CHILDS. I didn't know.

The COURT. All right; note the objection.

Government's Exhibit 50

Mr. SHALE:

Proceedings of the district counsel meeting held at Carpenters' Hall August 4th, 1917.

Meeting called to order by President Brims.

Roll call showed all officers present.

All local unions are requested to appoint a committee for the purpose of drafting any changes they may want in our next agreement, the same to be in this office by October first.

Minutes signed by Daniel Galvin, secretary-treasurer.

116 Government's Exhibit 51

Proceedings of the district council meeting held at Carpenters' Hall December 29th, 1917.

Meeting called to order by President Brims.

The president reported on the Saturday afternoon permits and stated that the Building Trades Council had recommended that central body agreement along similar lines to the present one be entered into between the council and the Building Employers' Association.

By Mr. SHALE. The rest of that is immaterial.

The minutes were signed by Daniel Galvin, secretary-treasurer.

Government's Exhibit 52

Proceedings of the district council meeting held Carpenter's Hall January 26th, 1918.

Meeting called to order by President Brims.

Roll call showed all officers present.

The following communication was received from General Secretary Duffy:

"I am in receipt of your two communications of the 3rd instant relative to the proposed trade movement of the mill men and the outside carpenters.

"In order that this matter may be brought to the attention of the general executive board, as provided for by section 58 of our general laws, I am enclosing herewith two blank schedules of inquiries, one to be filled out in connection with the mill men's movement and the other for the outside carpenters.

"Before filling out the schedules, or having a vote taken, I would ask that you read carefully section 58 of our general laws, especially that part relative to the 55 per cent vote."

Communication was ordered filed.

The minutes were signed by Daniel Galvin, secretary-treasurer.

Mr. FOWLER. Now, those letters come in there, I think.

Mr. SHALE. Exhibit 53 is a letter written on the letterhead of the District Council of the United Brotherhood of Carpenters and Joiners of America, Cook County, Illinois, dated Chicago, January 23rd,

1918, addressed to Mr. Frank Duffy, general secretary, United
117 Brotherhood of Carpenters and Joiners of America, Carpenters Building, Indianapolis, Indiana:

"DEAR SIR AND BROTHER: The agreement existing between the Mill Men's Association of Chicago and this council expires on April 1st, 1918.

"Our arbitration board has drawn up a proposed agreement which they intend to present to the Mill Men's Association, copy of which I enclose to you. Also copy of their present agreement.

"I am informed the Mill Men's Association will not enter into negotiations with our board until after the agreement with the outside carpenters is signed.

"Consequently, I am unable to give you any more definite information on the matter, but will do so as soon as the joint board meets.

"Trusting you consider this as an official notification, thereby comply with the provisions of section 58 of the general constitution, entitling us to official sanction and financial aid in case the mill men have to go on strike to gain their demands.

"With best wishes and kindest regards, I am

"Yours fraternally,

"*Secretary and Treasurer.*"

Government's Exhibit 54

Written by the secretary-treasurer of the District Council of Chicago, and addressed under date of January 23rd, 1918, to Mr. Frank Duffy, general secretary of the United Brotherhood of Carpenters and Joiners at Indianapolis.

"DEAR SIR AND BROTHER: The agreement existing between this council and the Carpenters and Contractors' Association for the outside carpenters expires on May 31st, 1918.

"Therefore it becomes my duty to inform you that our arbitration board intends to demand an increase in wages from 70c. to 80c. per hour.

"They have held a few meetings, but I am informed they did not delve into the agreement but a little.

"I will inform you of the progress made after each meeting of the joint board.

118 I trust you consider this as official notification, thereby entitling us to official sanction of the executive board and financial aid if we were unfortunate to have to go on strike to gain our demands.

"With best wishes and kindest regards to you and the guardian angels of the finances of the United Brotherhood, I am

"Yours fraternally,"

Government's Exhibit 55

Proceedings of the district council meeting held at Carpenters' Hall February 23rd, 1918.

Meeting called to order by President Brims.

Roll call showed all officers present.

The arbitration board of the outside carpenters presented a proposed three-year agreement with the contractors' association with a wage scale of 80c. per hour, and a Saturday, payday.

Motion prevailed unanimously report be received and proposed agreement be referred to referendum vote by all members, returns on votes to be in this office on or before March 16th.

Minutes signed by Daniel Galvin, secretary-treasurer.

Government's Exhibit 56

Proceedings of the district council meeting held at Carpenters' Hall March 2nd, 1918.

Meeting called to order by President Brims.

Roll call showed all officers present.

The president reported on the Saturday afternoon permits granted, and that he and Brother White had a meeting with a representative of Wolff and Nollau Company and was of the opinion their mill would be unionized in the near future.

Report was ordered received.

Minutes signed by Daniel Galvin, secretary-treasurer.

Government's Exhibit 57

Proceedings of the district council meeting held at Carpenters' Hall March 9th, 1918.

Meeting called to order by President Brims.

Roll call showed vice president absent.

119 Millmen's arbitration board presented a proposed three-year agreement with their employers with a wage scale of 50c. the first year, 55c. the second year, and 60c. the third year, with an eight-hour day and four hours on Saturday.

Motion prevailed that it be adopted as read.

Minutes signed by Daniel Galvin, secretary-treasurer.

Government's Exhibit 58

Proceedings of the district council meeting held at Carpenters' Hall March 16th, 1918.

Meeting called to order by President Brims.

Roll call showed all officers present.

The following communication was received from General Secretary Duffy:

"Your letter of March 7th is at hand, and it gives me pleasure to learn that your arbitration board has succeeded in arriving at an agreement with the outside contractors and that you have reason to believe will meet with the general approval of your membership.

"I should be glad to hear further from you when you have any additional information to offer."

Communication was ordered filed.

The referendum vote cast upon the adoption of the agreement of the outside carpenters resulted as follows: 5,063 in favor and 201 opposed.

The president reported on the Saturday afternoon permits granted and stated there was a call from the general offices for one hundred carpenters for Charleston, West Virginia; wages 62½c. an hour; double time for all overtime. Also three hundred men were needed in Rockford.

That the contractors had adopted the agreement except article 3 which they disapproved and stated he and the other members of our arbitration board will not sign the agreement with any change unless the council gives them instructions to the contrary.

Moved and seconded the report be received and the action of our arbitration board be endorsed.

Motion carried.

Those minutes were signed by Daniel Galvin, secretary and treasurer.

120 Government's Exhibit 59

Proceedings of the district council meeting held at Carpenters' Hall March 30th, 1918.

Meeting called to order by President Brims.

Roll call showed all officers present.

Communication received from General Secretary Duffy, which was ordered received and filed.

"I have your letter of March 28th in which you informed me that the proposed agreement between your district council and the Carpenter Contractors' Association has been approved by the referendum vote, but that final settlement is held in abeyance on account of some objection by the employers to article 3 of the agreement.

"Your letter and the accompanying mill men's agreement will be submitted to the general executive board when that body meets at this office on April 10th."

The referendum vote cast on the adoption of the millmen's agreement resulted as follows: 1,044 in favor and 205 against.

The president reported on the Saturday afternoon permits granted and stated that he had a call for fifty men to go to Dayton, Ohio, and also that the Carpenter Contractors' Association had disapproved our agreement for the second time by twenty-two votes. That the mill owners would sign the mill men's agreement and that all mill men would then receive 50c. an hour, eight hours a day, commencing Monday, April 1st.

Report was ordered received.

Signed, Daniel Galvin, secretary-treasurer.

Government's Exhibit 60

Proceedings of the district council meeting held at Carpenters' Hall April 6th, 1918.

Meeting called to order by President Brims.

Roll call showed all officers present.

President reported on the Saturday afternoon permits granted, and stated that the mill men's business agent was very successful in having their agreement signed by the various mills and cabinet shops except the Liquid Carbonic, which was expected to sign
121 on Tuesday, next. He also stated there was nothing to report on the outside agreement.

Signed by Daniel Galvin, secretary-treasurer.

Government's Exhibit 61

Proceedings of the district council meeting held at Carpenters' Hall April 13, 1918.

Meeting called to order by President Brims.

Roll call showed all officers present.

The president reported on the Saturday afternoon permits granted and stated that the Carpenter Contractors' Association had signed our agreement and also that article 3 was changed to read as follows:

"There shall be no restrictions against the use of any manufactured material except nonunion or prison-made. This shall not apply to machine-made flooring, ceiling, partition, planed lumber, or hardware of any kind."

He further stated the mills and Cabinet Shops had nearly all signed the inside agreement, except the Liquid Carbonic Company, who employ sixty-one of our members; that fifty-three of them had voted to go on strike Monday morning unless guaranteed the conditions of the agreement.

Minutes signed by Daniel Galvin, secretary-treasury.

Government's Exhibit 62

Proceedings of the district council—

Mr. FINK. Will you read that next sentence in the last minutes?

Mr. SHALE. And recommend that we——

Mr. FINK. Yes; if you will just read down there to the word "form."

Mr. SHALE. Just above the signature of Galvin there, "recommended that we procure the necessary amount of both inside and outside agreements in book form."

Government's Exhibit 62

Proceedings of the district council meeting held at Carpenters' Hall April 27th, 1918.

Meeting called to order by President Brims.

Roll call showed all officers present.

122 Communication received from Vice President Cosgrove, stating:

"A copy of the articles of agreement entered into between the Chicago District Council and the Carpenter Contractors' Association of this city has been brought to my attention, and after carefully perusing the same, it has my approval as submitted."

Communication ordered noted in the minutes.

A communication received from General Secretary Duffy congratulating us on our success having the millmen and outside carpenters' agreement satisfactorily settled and signed.

The communication was ordered filed.

Mr. McKINLEY. There is another paragraph.

Mr. CHILDS. Would you mind reading that other paragraph?

Mr. SHALE. The president reported on the Saturday permits granted and stated the inside men's agreement was signed by the three associations of mill owners and was sorry to say that when some members imbibed too much they came to the office to break in the door."

Mr. FINK. That is all; we don't care about the last part—about the imbibing.

Mr. SHALE. These minutes were signed by Daniel Galvin, secretary-treasurer.

Government's Exhibit 63

Proceedings of the district council meeting held at Carpenters' Hall May 11th, 1918.

Meeting called to order by President Brims.

Roll call showed all officers present.

Referring to the president, he also stated that the arbitration board had a meeting with representatives of the mill owners with a view of devising some plan whereby the nonunion-made material they had on hand prior to May 1st could be used. They decided to have the council procure stamps and have the stewards in the mills stamp it during the next two weeks so as it will be known it is not union made.

He further stated that Brother White had succeeded in unionizing Wolff & Nollau's mill and was of the opinion the men working there would become members of the mill men's union during the coming week.

Report was ordered received.

123 Minutes signed by Daniel Galvin, secretary-treasurer.

WITNESS. He states that in 1918 there were about 1,700 members in the carpenters' organization; a little over three thousand were inside workers and the remainder were outside men. To his knowledge, there were no carpenter contractors in Chicago at that time working with nonunion men; he doesn't know the number of millmen inside of Chicago who at that time were working with nonunion men. He knows nothing about Wolff & Noilau

independent of the records, and knows nothing about whether they had any open-shop millmen. William Brims was president of the district council; Stanley Muszalski was elected a member of the millmen's arbitration board—that is, the inside carpenters; he was the same Muszalski that signed the contract between the millmen's association and the district council. B. J. G. Whittman was elected by a local union of millmen, of which he was a member, to the arbitration board of inside carpenters and millmen. Anton Sommers had the same connections; also James Smith and Joseph B. Fox. Mr. Fox may have been secretary of the arbitration board. F. C. Bromley was a business representative of the millmen and paid by the district council; he represented the inside carpenters as their representative in the district council; he was commonly known as a business agent. The duties of a business agent was to smooth out little difficulties that might arise between employer and employee, also getting some of the members employment. The city of Chicago was divided into districts and business agents would have a certain district. Bromley represented the council; he had no district. Joseph Dusek was one of the three business agents selected by the inside carpenters and paid by them, and he had a district. There were three business agents for the inside carpenters. John Loris was a business agent, the same as Dusek and Bromley; they looked after the interests of the millmen and were paid for that purpose. Thomas F. Flynn represented a local of the outside carpenters and was their business representative. As regards the three business agents who represented the inside men, their districts were divided up in the city. W. G. Schardt was the business representative of the outside carpenters and paid by them. William C. White was the business agent representing the outside carpenters in
124 the district council and paid by the district council at the time.

Daniel J. Ryan was a member of the arbitration board between the outside carpenters and the carpenter contractors. The union had five representatives on each board; the five of them signed the contract. Joseph Veltman was a business agent for the outside carpenters. Charles Wright and Thomas Church were business agents of locals of outside carpenters. Harry Jensen in 1918 was only a member of the carpenters' organization; he wasn't president until July, 1921. Before that he was at times a delegate to the district council; he held no other position other than that of representative before he became president.

Cross-examination by Mr. Thompson

He has been a carpenter practically all his life and recalls when the United Brotherhood of Carpenters and Joiners was originally organized, which was in 1881, the organization being in Chicago, and during the first year or two there was a very small number of members in the organization. He has been identified with the organization in minor capacities in the local union of which he is a member

for a long time, and held the position of secretary and treasurer of the district council from July 6th, 1907, to July 7th, 1921. Has been a member of the union for thirty years and to a good extent is familiar with the general management of the United Brotherhood and has seen its constitution.

Identifies a booklet as containing the laws governing the entire management of the United Brotherhood of Carpenters and Joiners of America, which is amended or changed every two years when the general convention is held, but since 1918, on account of the war, it is every four years. The booklet is changed and reprinted with every convention. It contains the laws and rules governing local unions, the management of the finances, death benefits, and rules pertaining to strikes and lockouts, and how the revenue shall be distributed. Offers document for identification, whereupon said document was marked "Union Exhibit 1 for identification." The United Brotherhood of Carpenters and Joiners of America, commonly spoken of as the carpenters' union, has a general office in Indianapolis, Indiana; it has a general president, two general
125 vice presidents, general secretary, and a general treasurer. Mr. Duffy is general secretary. It has a general executive board, the United States being divided into seven districts, so many States to a district, from which a representative is elected at each and every convention by general referendum vote throughout the United States; also Cuba and Porto Rico, where there are two unions. The district we are living in here is known as District No. 2, comprising Illinois, Indiana, and Michigan. This general executive board meets quarterly.

Counsel offers in evidence the constitution of the United Brotherhood of Carpenters and Joiners of America, as union Exhibit 1, whereupon said document was received in evidence and marked "Union Defendants' Exhibit 1."

See — page below for pertinent excerpts.

WITNESS. Throughout the United States there are over four hundred thousand members in the United Brotherhood; the brotherhood at large is divided into locals; there are some two thousand locals throughout the entire jurisdiction. In the matter of revenue the organization is supported by the local unions—that is, a charter is granted by the general office when any ten members make application; that is, those who work at the carpenter trade. Monthly dues are paid; here in Chicago every member pays $1.00 per month, and 34 cents per month of that goes to the general office in Indianapolis and ten cents goes to the governing body in Chicago. The brotherhood undertakes to secure for its members sick benefits; this is not universal, but very close to it. It amounts to five dollars per week, and there is a death benefit of three hundred dollars and a death benefit of one hundred dollars to the wife of the member. Another benefit the members receive is the shortening of the working hours; an eight-hour day is becoming almost universal, and working conditions in general are better. The national organiza-

tion assists the members in securing these benefits, including better wages, in that when an increase in wages is wanted in any local they send representatives to assist them in gaining their demands, particularly in small localities. Since this organization was formed the hours of work have been shortened and wages increased one hundred per cent. In the matter of organizing representatives that are appointed by the general office go around the country in
126 districts that are unorganized and endeavor to interest unorganized carpenters and show them the benefits to be derived if they become members of the brotherhood. He believes the brotherhood seeks to organize these unorganized localities because any craft is not thoroughly complete until each and every man working at that craft becomes a member of the organization.

These organizers go all through the country seeking to induce men to join the union. The district council is the governing body in this locality with the employers. There is an elective committee of five and they negotiate working agreements with employers. When the agreement has been negotiated it is then approved by the district council and referred to a referendum vote; copies thereof are distributed for a referendum vote to the entire membership. If they approve it, it then becomes the agreement; if they disapprove it, it is null and void. If it is approved it is then signed by the committee which negotiated it on behalf of the whole body. When he referred to millmen in some of his former answers, he meant carpenters working in factories and mills. States that in one of the minutes put in evidence by the Government, where it is said the president suggested that if the outside carpenters would accept employment from the members of the contractors' association only, that would help our millmen, which was the minutes of March 3d, that in that instance the president referred to the carpenters working in the mills, factories, or shops. The United Brotherhood has not always had these so-called millmen or inside carpenters as part of its union; there was formerly another association of inside carpenters or what are sometimes called millmen, which was known as the Amalgamated Woodworkers; they had locals here in Chicago and throughout the country. They became united with the United Brotherhood in the spring of 1911, here in Chicago, and generally speaking throughout the whole country at about that time. They merged in with the United Brotherhood. Previous to 1911 or 1912 it could have been possible that the United Brotherhood had some members who were working in shops—that is, inside workers. The United Brotherhood has a label which it uses to mark material its men manufacture and that label is indicated in the constitution; the label has been in existence since shortly after the formation of the United Brotherhood, or about forty years.

127 It was the custom to apply the label to material manufactured by members of the union in any mill or shop and

to material to be erected on the outside by union carpenters; it was also applied to furniture manufactured by union men. The purpose of the union label was to better conditions and wages in the mills and also to see if it would increase the membership and to show that an effort was being made to bring both branches of the trade up to the same level. When it was referred to in a resolution about organizing the mills of Oshkosh, that would mean for the authorized parties to send organizers there and endeavor to show the members working in those mills that it was to their benefit to become members of the carpenters' union. He doesn't know whether such efforts were made in Oshkosh as well as elsewhere throughout the country; the only thing the carpenters of Chicago had to do with that matter was to recommend it to the general board. Mostly all the mills in the Chicago district, which included Cook and Lake Counties, in 1918, were employing union carpenters to manufacture their material. Identifies a booklet as one printed by himself and published in August, 1918, showing a list of the mills, factories, and shops in Cook and Lake Counties, that employed union men exclusively, and also the various branches of business they were engaged in. The list is correct as of that time. Document referred to introduced as union defendants Exhibit 2, whereupon said document was marked "Union Defendants Exhibit 2." See — page below. He doesn't know how many mills are listed, that over a period of two or three years, the list became larger, increased about one-fourth. He doesn't know how many mills there were in the United States at that time that were employing members of the United Brotherhood only; the general offices publish such a list. Identifies a booklet as containing a list of all the union shops in the United States and Canada at the time it was printed, June 15th, 1918. This list was printed by the general offices in Indianapolis.

Said booklet offered in evidence as union defendants Exhibit 3, whereupon the document referred to was marked "Union Defendants Exhibit 3." See — page below. He is familiar with the contracts which have been made by the carpenters' union from time to time with employers and says that article 3 in its original
128 shape was first put into an agreement in February, 1901. On February 5th, 1900, the contractors of Chicago of all trades locked out their membership; it lasted from February 5, 1900, to the latter part of February, 1901. The carpenters were the very last to make peace with their employers, and there was accepted in the agreement what was known as the cardinal principles, and among them what is known as section 3 of article 3, which reads as follows:

"There will be no restriction on the use of any manufactured material except prison-made."

The carpenters' union did not want that exception in the agreement and has never wanted it. They have been endeavoring from the date mentioned up to 1918, to have the present article take its place. Communications from practically all around the district

come into the governing body of the council that the arbitration board be requested to use their best efforts to have article 3 eliminated. These communications came in from a considerable number of locals and they came from the same locals on more than one occasion. About six months prior to the expiration of every agreement he was requested to make an insertion in the minutes requesting the local unions to send in any charge they wanted embodied in the coming agreement. The carpenters' union objected to section 3 in its old form, because if the organization formed around the country, they would be all union men, and the members here in Chicago would be opposed to erecting material in buildings that did not bear the emblem of union labor. An effort was made to change article 3 in its old form all during the interim of the agreement and up to 1918. They wanted article 3 changed from its old form for the benefit of the members in Chicago and for the benefit of the millmen, so they wouldn't be obliged to erect nonunion material on buildings, also to get a larger membership and to make conditions better. By millmen is meant inside carpenters. To his knowledge, the union carpenters had never refused to install material manufactured out of Illinois if it had the union label on it; the policy of the organization is to erect any material, no matter where it comes from, so long as it has the union label on it. It was contrary to the national policy, for instance, to install material made by the nonunion mill at Rock Island. He states that with reference to a letter from General Secretary Duffy, appearing in the
129 minutes of March 30th, and which the Government put in evidence, a part of which reads as follows:

"I have your letter of March 28th, in which you inform me that the proposed agreement between your district council and the Carpenter Contractors' Association has been approved by your referendum vote, but that final settlement is held in abeyance on account of some objection by the employers to article 3 of the agreement"; he didn't know that the contractors objected to that, but was informed to that effect, otherwise it would not appear in the letter. He recalls writing a letter, heretofore introduced by the Government, where some mention was made of the matter that the agreement with the mill association would not be consummated until after the outside agreement was signed; that he wrote in there, "I am informed that the millmen's association will not enter into any negotiations with our board until after the agreement of the outside carpenters is signed," because it was commonly said around the office for months, and he was aware of it himself, that the arbitration board of the inside carpenters were not meeting with the employers. No reason was given for the delay and he never heard of any reason. He just heard the rumor and wrote it to the secretary. The agreement between the millmen and their employers went into effect, he believes, April 1st, 1918. He doesn't recollect that the old agreement expired on March 31st; but if the booklet so states it, it is correct.

The new agreement went into effect immediately upon the expiration of the old agreement. Joseph Dusek was a business agent in earlier years, then ceased to be for several years, and was then reelected. He doesn't recall the year. Attention of witness called to Government's Exhibit 35, identified as the original document, and attention called to page 2, with a little strip pasted on it; states he doesn't recall whether the document was voted on in the form it now appears or whether it was voted on in the form it appeared after the strip was pasted on it. States he got a copy of the original document that became effective in 1918 from Mr. Ryan, secretary of the arbitration board, after it was adopted by the council and referred to a referendum vote; it was then made into book form. The agreement is in the form in which it was voted on by the members of the outside local. Attention called to section 3 of article 3, reading as
130 follows: "There shall be no prison-made material used," and he states that is in the form in which the outside carpenters voted on that agreement. After it was finally adopted by the arbitration board it was given to me by Mr. Ryan, secretary of the arbitration board, after being voted on, and copy was ordered printed thereof. He compared it with the galley proofs that had been made and received copies a few days later. He got somebody to read it and compared it with the original and sent two or three copies to the various locals in Chicago for them to vote on. He was then authorized to have the leaflets printed; had about 15,000 printed. They remained in the office; some of them are there to this day, and any local union wanting them is at liberty to take them. They were generally distributed around the district. Immediately after he had it printed it was furnished to every local union that made request; they were made up in packages of 100, 500, and sent out in that way. He did not handle them at all, as some of the larger locals would go after them.

Cross-examination by Mr. Fink

He doesn't know whether or not just prior to April 20th, 1918, or just about that time, there were only two nonunion mills in Chicago—Nollau & Wolff and Anderson & Lind. Stipulated between counsel for the Government and defendants that prior to 1918 there were only two nonunion mills in Chicago, one being Nollau & Wolff and the other Anderson & Lind. He doesn't remember the minutes of March 16th, 1918, of the district council, wherein is said: "The president reported that the contractors had adopted the agreement, except article 3, which they disapproved, and stated he and the other members of our arbitration board will not sign the agreement with any change unless the council gave them instructions to the contrary." It must be so if it is in the minutes; he doesn't remember the minute. The union, the outside carpenters, had made up their minds they were going to have article 3 changed or eliminated. To his knowledge he doesn't know whether or not they were going to have it read "there shall be no prison-made material used." He

received a copy of the agreement from the arbitration board and sent it out for a referendum vote. He had no connection with the agreement whatever. The agreement was entered into know-
131 ing that the general membership of the contractors wanted some change. Our board would not change it for them.

Cross-examination (continued) by Mr. Thompson

The carpenters' union, as shown in the minutes, voted on the contract and adopted it, and the large sheet was the one they voted on. In the form in which the union voted on it, article 3 read: "There will be no prison-made material used," and when Mr. Brims said they would not make any change, because the union had already voted on it, he meant they would insist on letting it stand in just that form: that is, "there shall be no prison-made material used."

Cross-examination by Mr. Childs

He doesn't know the meaning of Division G. Doesn't know whether Government's Exhibit 5, which is the contract entered into between Division G and the union, is exactly similar to the contract entered into by all employers of inside men in 1918. Doesn't know whether the contract entered into on behalf of the inside men in the spring of 1918 was the same with reference to every employer. It was none of the duties of his office and he had no connection with it. All contracts were not turned over to him, but when the arbitration board presented him with an agreement they succeeded in formulating with the employers, he got copies thereof printed and referred it to a referendum vote of the membership, and they adopted it; he got it printed in booklet form. He knows nothing about an organization called the Cabinet Manufacturers' Association; has heard the name mentioned.

Cross-examination by Mr. McKinley

During his fifteen years of office he never attended a meeting of the joint arbitration board in the contractors' rooms. The matter originated for the change of article 3 to the form it was put in 1918, some six months prior to the expiration of the agreement ever since 1901. At that time there was always a request sent out by me for suggestions from the various locals for anything they
132 wanted embodied, and letters were received from them requesting the arbitration board to see that article 3 be eliminated. The policy of our international association was to change article 3. He had instructions from the international officers to fight as far as possible for a change. In 1918 William L. Hutchison was international president. The carpenters' union in Chicago in the fall of 1917 and the fall of 1918 was numerically strong; there were over 14,000 outside carpenters and three thousand inside carpenters. This

was one of the weak points in the history of the union, because everything was declared nonessential by the Government; the men had to go where they were building ships and cantonments for the Government; the men were leaving Chicago in the fall of 1917 and spring of 1918. About fifteen hundred carpenters left Chicago in 1917 and up to May, 1918. He doesn't know if they remained away for any length of time. There was a surplus of mechanics in the spring and winter of 1918 in Chicago because everything was declared nonessential. He doesn't know if the wages in the other cities were higher than in Chicago, nor if the Government contractors were paying higher wages. In one of the minutes he called attention to the fact that there had been a call for men from Chicago to Dayton, Ohio; that the call came from the representative of the organization in Dayton, where they were building an airplane factory. The Wright airplane factory was located there and that was Government work. There is another minute where he states they were also calling them to Charleston, West Virginia, where the T. N. T. was being manufactured. There was a big factory there. Men were also going to Rockford and also to Rantoul, Illinois, and as far east as Baltimore, also to Ft. Custer, Michigan; in fact, everywhere there was a cantonment. Contractors were not having difficulty getting employes in Chicago; there were plenty of men here. He doesn't know how many members the contractors' association had; he hadn't been in the contractors' office since the spring of 1917; he had no dealings whatsoever with them. The carpenters' union was always watching for a psychological moment, even in 1918, and in 1915, when the former agreement was made, to get article 3 changed. He doesn't know what would have happened if the contractors had entered into an agreement as to the change in article 3. He doesn't know if
133 the men threatened to strike if they did not get the proposed change in article 3.

Q. Do you know whether or not a fight was going on in other jurisdictions to have a closed-shop agreement so the men would be eliminated from working on nonunion materials?

Objection by counsel for Government. Objection sustained. To which ruling of the court, the defendants, and each of them, by their counsel, excepted.

In the instrument that was sent out to the men to vote on, where it said "there shall be no prison-made material used," that meant anything that was manufactured in the penitentiary or prison would not be handled. It did not mean that the men would work on all other material, such as nonunion material. It meant we would not erect anything but the material bearing the union label, and that is what the men understood it to mean. In the old article 3, the men could not refuse to work on nonunion material under the terms of the agreement, but under the terms of the agreement with this clause in it, "there shall be no prison-made material used," they could

refuse to work on goods that did not have the union label. The article as adopted is the same as I referred for a referendum vote. He doesn't know if there was added to it an exception for machine-made flooring. The unions were in a strong position in the early spring of 1918, but at other times they were stronger numerically. In 1915, when the agreement expired they were a little stronger than in 1918, on account of the men leaving Chicago. There were still members in Chicago, but they were paying their dues in other localities; that is, during the war. During 1918 there was a demand for carpenters as far east as Washington and down to Virginia; they even went to the Pacific coast and to the Southern States. He didn't receive notice from the Government in 1918 as to what nonessentials were. Building got better in Chicago immediately after the armistice. In the spring of 1918 building was very dull; building was declared nonessential and you couldn't ship it if you wanted to.

Recross-examination by Mr. Thompson

The carpenters who were called away to work for the Gov-
134 ernment were mostly outside carpenters. John T. Cosgrove is first vice president of the General Brotherhood of Carpenters and Joiners of America: he has entire charge of the label and the distribution of the label, also with the general compiling of statistics and information regarding the inside men, also to see if signed agreements comply with the laws of the United Brotherhood before being adopted in the by-laws. The contracts made with employers have to be approved by him before becoming effective. Identifies a report of the 1919 general convention, held July 30, 1916, in Fort Worth, Texas, approved by John T. Cosgrove, which was his report for the two years previous. This was distributed generally among the members of the organization. Identifies another document, being a report of the labels and by-laws and part of the agreement that was approved by Mr. Cosgrove at the convention in 1920 at Indianapolis, Indiana. This was the next succeeding convention after the one in 1916, and the two reports are consecutive in their order. Documents introduced in evidence as union defendants' Exhibits 4 and 5, whereupon the documents referred to were marked "Union Defendants' Exhibits 4 and 5."

Recross-examination by Mr. McKinley

He doesn't know whether the contractors were in favor of a change in article 3; he had no dealings with them; he never came in direct contact with them; he is not acquainted with members of the arbitration committee of the contractors. He knew the officers of the contractors' association in 1918, but had no acquaintance with them.

Redirect examination by Mr. Fowler

Objection by Mr. Fowler on behalf of the Government to union defendants' Exhibits 4 and 5.

Statement by Mr. Thompson, counsel for union defendants:

"The main reason they are offered is to get in this information: The first on page 4 is a tabulated list by States, showing the number of local unions reported in 1919, the number of district councils, the number of union mills reported by States and the number of nonunion mills reported by States; also the number of union
135 men employed in the union mills, and the number of nonunion men employed in nonunion mills, and the number of hours which the men worked in union mills, and the average hours which the men worked in nonunion mills; the average wages per day in union mills and the average wages per day in nonunion mills.

"The same list appears in Exhibit 5 on page 9, and, taken altogether, forms a rather enlightening piece of evidence, I think, on the general situation."

Objection of counsel for Government sustained.

To which ruling of the court the defendants, and each of them, by their counsel then and there duly excepted.

He addressed a number of letters to Mr. Duffy, general secretary of the entire organization; he had contracts between the Carpenter Contractors' Association and the district council printed after they were approved by both parties, and they were presented to him by Mr. Ryan, secretary of the artbitration board. The contract printed was the contract approved by the district council and also by the Carpenter Contractors' Association. He has no printed copies of the booklet in his possession. Could not say whether booklet handed him is a copy of the contract as approved by the district council and as printed by him or under his direction, unless he compared it with copies down in the district council's office. Document handed to witness. He states he would have to compare book with copy in office; the ouside cover looks like it. He presumes there are a number of copies in the office. He doesn't recall after a lapse of five years whether or not in the printed copy article 3 was in the following language: "There shall be no restriction against the use of any manufactured material, excepting nonunion and prison made. This shall not apply to machine-made flooring, ceiling or ceiling partition, planed lumber, timber, or hardware of any kind." Stipulated between counsel for Government and counsel for union defendants that article 3 in the agreement between the Carpenter Contractors' Association of Chicago and the Carpenters' District Council, Cook County and vicinity, reads as follows:

"There shall be no restriction against the use of any manufactured material, except nonunion and prison made. This shall not
136 apply to machine-made flooring, ceiling or ceiling partition, planed lumber, timber, or hardware of any kind."

He states the union adopted a label; doesn't recall the year it was adopted, but it has been in use at least twenty years, and the purpose of the label was to identify union-made goods from cheap manufactured goods; that is, when goods were manufactured by union men the label was put on. If goods came from outside of Chicago that did not have the label on them, the object of this article was to keep men from working on those goods. He doesn't know personally anything about what mills were on the outside. If goods bore the union label and were made by other union men where wages were different and working conditions different, union men would work on those goods. They were controlled by the label. Identifies book on the back of which appears the following: "Book No. 6," and the word "Present" in parenthesis, "May, 1920, to ——," as one of the minutes books of the organization. He kept that book. Minutes of July 22, 1920, in book marked for identification as "Government's Exhibit 64." Minutes of July 22, 1920, are entitled "Proceedings of the outside men's trial board, held July 22, 1920. He recalls something in the minutes about marking some goods with the union stamp for the purpose of O. K.'ing certain goods, so that the union men would work on them. This was ordered by the arbitration board when they formulated the agreement in 1918, so that any contractor who purchased material several months prior, but was not delivered in Chicago, could show it was bought when it arrived in Chicago and stamped so that the members would handle it. He presumes the same provisions applied to some mills getting outside material. The stamp was not the same as the regular union stamp; it was simply "O.K. District Council," just a rubber stamp. He did not have charge of the stamps. Mr. Brims had them. There were thirty of them ordered printed, he believes, at Hanson's, on Clark St., and when the thirty came in he turned them over to Mr. Brims. The stamps were not at times called "bug." Agreed that exhibits be considered as read (referring to union defendants' Exhibits 1 and 2.

137 Mr. ROBERT A. POTTINGER, called as a witness on behalf of the Government, having been first duly sworn, testifies as follows:

His name is Robert A. Pottinger; he lives at 4321 N. Keystone Ave., Chicago; his business is real estate and building. He is not a contractor. Has been engaged in his business for about twenty years. He has built about six hundred houses in Chicago. He built houses along in 1918 and 1919, and in the latter part of or early part of 1919 he had a 36-flat building under construction, located at 4032-34 Irving Park Blvd., Chicago. The material for the inside finish he purchased from Anderson & Lind Manufacturing Company, located at 2100 Iowa Street. They are known as millmen; they manufacture inside finish. They do not manufacture doors. They make windows and interior trim. They handle doors, also windows, which they get from Wisconsin. Anderson & Lind run an open shop.

In that particular building he purchased $4,500 worth of material, including windows, sash, doors, frames, casings, and caps, from Anderson & Lind. He had trouble in installing it.

Objection by counsel for union defendants. Objection overruled.

He had about twenty-five men working, all union men, and they were going along trimming the building and putting in the window frames; some of the building was already trimmed. He went uptown for something and when he returned he found a note left with his girl stating that the work was stopped by orders of William Brims on account of nonunion material. William Brims was president of the carpenters' union at that time. When he received the note he went down to see Brims to try and get the thing settled.

Objection by counsel for union defendants on behalf of all the other defendants, except Brims, as to conversation he had with Brims. Same objection on behalf of material men. Objection overruled. Exception by counsel for the defendants and each of them.

He went to see Brims to see whether or not he could go ahead with the work two or three times, and Brims finally told him that if
138 he would give him a letter agreeing not to buy any more material from them he would let him go ahead. He hasn't copies of the letters he had written to Brims and to Anderson & Lind with him. States they are on file in another case. After Brims got his letter he came out to the building and said, "What are you trying to do, Pottinger, put me in jail?" He (Pottinger) said, "No; I am trying to get my building done." Brims said, "where is your foreman?" He (Pottinger) said, "he was in there." Brims said, "bring him out here." Brims said, "go ahead and use that trim and don't tell anybody we stopped you." He said there was an injunction against him from stopping anything; that the Anderson & Lind Company had taken it out against him. He didn't interfere with me any further as to that particular material, and the work was finished. This happened about August, 1919. In January or February, 1920, he had the same difficulty with Brims on a forty-four apartment building, with six stores in it, located at 4017 to 4029 Irving Park Blvd. He started the building, got the foundation in, and was laying the brick, but he couldn't get any trim, doors, frames, or millwork. He called up Brims and told him he had to get trim for the building. He spoke to Anderson & Lind about it, but was afraid to buy it from them. He was afraid to buy it from people up in Oshkosh or elsewhere, because he thought his building would be tied up. Brims told him to call up a frame concern over on Iowa St.—Wilborn & Son—which he did. He asked them if they would make up some frames, and they said "yes," "send over the plans." He sent the plans over and they gave him the figures. He told them to go ahead and make it up. Then he got up to the roof. About April 1st, Tom Church, a business agent of the carpenters' union, and Mr. Jensen, president of Local 181, came out to the building. Jensen was running for president of the Carpenters' District Counsel and he was electioneering. He (Pottinger) was figuring on build-

ing three or four big buildings in the neighborhood, and he called in Tom Church and showed him the different plans, and said he wanted to go ahead and that it was impossible to get trim. Church said, "go ahead and buy the trim wherever you can get it; if they can't supply it in Chicago, you go go ahead and buy it wherever you can." He (Pottinger) gave a contract to Anderson & Lind for the material, and it was delivered in May or June. It seems as
139 though there was a let-up in business and everybody was out of work. Tom Church and Brims stopped my job and wouldn't let me use the materials; they told me it was out-of-town material and I could not use it. That was after Church had told me to go ahead and get it. He then went to see Mr. Hope Thompson and Brims and tried to do something to get the building started. Mr. Thompson told me to buy the material from a Chicago mill. He installed the material that he bought from Anderson & Lind; that is, he had about one-third of it on when they stopped me. The other two-thirds he left there. He then when to Rittenhouse & Embree and bought the material for the balance of the job. They are manufacturers in Chicago and run a union shop. They started furnishing the material and he started putting it in, when the Anderson & Lind Mfg. Co. went in before Judge Sullivan and got an injunction against him preventing him from using union-made material. He then told his carpenters they couldn't use any more union-made material; they would have to use the other. He had the men work on it and finish the building under an order of court. He had some other trouble on some bungalows, four of them, he was building on North Kedvale Ave.; he had them up to the first floor and was putting the joists on and setting the window frames when William Brims and Tom Church came over and called off the men. This occurred in August or September, 1920. The inside trim for these bungalows was purchased from Anderson & Lind.

The men were working and putting up the frames when Brims and Church came out and called the men off the building. Some of the men were a little slow in coming off the job and Brims yelled at them to come out of there. Brims said: "Pottinger, you are through and out of business, and you cannot do any more building in Chicago and you are done." Anderson & Lind got out an injunction and he continued with building the bungalows. He couldn't use the Anderson & Lind frames and bought new frames; they wouldn't let him use the frames; this was before the injunction was issued, and he bought the frames that went into the bungalows from the Avondale Sash & Door Co., a Chicago firm. These frames had the union label on them. The frames he didn't use he piled up on the back of the lot and called up and tried to get Anderson & Lind to take them back, but they refused. They wouldn't take them
140 back and they went to waste. They were worth five hundred and some odd dollars; that's what he paid the Avondale Company for the new ones.

Q. How much did you lose on all the trim that you couldn't use because of these troubles in all these buildings?

A. O Lord, it broke me.

With reference to what he lost on all the trim he couldn't use on all these different buildings, he states that in 1920 he owned a thirty-six-flat building and a store and office building; he owned another thirty-six-flat building and a forty-two-flat building and owned a lot of vacant property; that when he got through he had $25,000 worth of judgments against him. He had no other trouble besides the three jobs mentioned along in the year 1919 or 1920; he had no trouble with them on any other building at that time. Brims or Church never said anything to him about money or paying them money. They did tell him to see Mr. White. He saw White in the Chamber of Commerce Building, but nothing happened. They told me to go out and see a firm over on Kedzie Ave., Von Platten & Dick; this was with reference to buying building material. He got no material from them; they are a mill concern; he thinks they manufacture their material in Chicago; he never bought any material from them.

Cross-examination by Mr. Thompson

At the time he was not a member of the Carpenter Contractors' Association. Representatives from the Carpenters District Council came out to see me one day; they had a card and told me that unless I signed the card and paid them $50.00 they would not let me have a man. He signed the card; this was in about July, 1919. Doesn't know if card he signed read as follows:

"Carpenter's District Council:

"I hereby agree to pay all carpenters in my employ one dollar per hour and comply with all the provisions of the present agreement."

He doesn't know if the agreement there referred to was the agreement put in evidence between the Carpenter Contractors' Association and the district council, but he supposes so; he signed the card
141 without knowing what he was doing because he wanted to get carpenters; it didn't matter what he signed. When he signed the card he didn't know that union carpenters refused to work on nonunion material; says the union carpenters themselves never refused. He didn't know it was the policy of the union for a long time. He did testify in another case pertaining to this same matter, and he did testify there as follows:

"I knew the carpenters' union objected to working on nonunion mill work at the time I signed this card just referred to."

He also testified as follows:

"I knew it was a part of their general rules and regulations not to use nonunion material and I believe it had been their policy for a long time."

He did not know that at the time he signed the card that if he bought nonunion material the union carpenters would refuse to install it; he knew that the rules of the union forbade it, and when he bought the nonunion trim and offered it to them, he knew he was asking them to violate their agreement; he didn't consider his signature as binding; that when he signed the agreement he intended to hire the men and pay them their wages; he didn't know at the time he was going to buy nonunion material; he doesn't believe he had already contracted for the job. He did testify in the case already referred to "at the time I signed that card I was using Anderson & Lind Company's material," he testified to that under oath. He didn't know that at the time he signed the agreement he was trying to flimflam the union, the union was locked out and glad to get work—they didn't care what they used. He thought it was more than a few days after the first trouble arose that he signed that agreement. At first he was notified by Mr. Church to come down and pay $50.00 and get a card and then he could hire the men. He didn't do that. Later on a business agent came out to collect the $50.00, and he gave the business agent a check for $50.00, made out to the Carpenters District Council and Mr. Ryan. It seems as though the business agent signed Mr. Ryan's name to the check and kept the money. He doesn't remember who the business agent was, he had it up with Mr. Brims in his office. It was a business agent of
the carpenters' union, doesn't remember his name, doesn't
142 think he would know him if he saw him. He has been a
builder for twenty years and was in close touch with Mr. Church. He wasn't the one who got the check. Then they came out and wanted to know why I didn't get the card and he (Pottinger) told them and went over to the bank and got the check and turned it over to Church, who took it downtown with some gentleman. He (Pottinger) was called in and Mr. Brims brought out another card and gave it to him. Brims said "It is all right—you paid your money and you have got your card." That accounted for the delay in getting the card. He didn't pay any more money—the thing was chased down and they found that that fellow really got the money. Brims said he would fix the fellow and then Brims gave me the card. In all his dealings with the union, the only question was the matter of nonunion material, it wasn't a matter of where he would buy it or how he bought it or who he bought it from, it was just the question of whether or not it had the label on it. The carpenters didn't object to installing anything he wanted to install. The only way he was interfered with was when Brims and Church came out and stopped the men, because the material didn't have the label. They didn't tell him he could not hire somebody else to install it and nonunion men—they did picket his building and wouldn't let anybody else work—they were there every morning. They never said a word to him or anyone else, or interfered in any way, shape, manner or form, except to tell the union carpenters to not use the

nonunion material. The Anderson Lind people run an open shop and they have had a fight on with the union for ten or fifteen years, a very bitter fight and they have been in court time and time again. There has been a very bitter economic controversy between the union and Anderson & Lind Co. He didn't know this when he bought the first material. He did know it at the time this controversy was on. No carpenter ever asked him for a dollar of graft—he doesn't know if Tom Church would have accepted it if he offered it to him. He never offered Church any money and Church never took anything. He could not get trim in 1920 and he wrote letters to a dozen firms besides Wilborn. His trouble in getting trim was not because his credit was bad and nobody ever told him that. He didn't hear one of the manufacturers testify in court that the
143 reason the manufacturer would not sell him trim was because his credit was bad.

He doesn't know if when Brims said, "Are you trying to put me in jail," if that had anything to do with the question of interstate commerce. He referred to the injunction that Anderson & Lind had, the old injunction running back to 1912 or thereabouts. Brims called the foreman off. He heard the foreman testify in court in another proceeding, in respect to this very matter.

Q. Did you hear the foreman testify that Brims never said anything of that kind to him?

Objection by counsel for Government. Objection sustained. To which ruling of the court the defendants, and each of them, by their counsel, then and there excepted.

He said he was told to buy from Anderson & Lind; also that he was afraid to buy from Anderson & Lind, because he was afraid the work would be stopped, he was afraid that Brims and Church would come out there after the men got started and stop them. They would only stop them from installing nonunion material—he knew it was the policy of the organization to do that if the material did not have the union label on it. He was afraid that Brims would come out and stop the men working on material that did not have the union label on it; that Brims had told him he was out of business. He didn't hear Brims tell him that he (Pottinger) had been lying to him for the last fifteen years and he (Brims) was not going to bother with him or do business with him any further. He met Mr. White in the Chamber of Commerce Building—he wanted to get White to fix up the matter so he could go ahead and use the trim. White told him to go out and see Von Platen and Dick. He states they were handling union stuff. He doesn't know if White meant to go out and buy union stuff or not. He went out to see Von Platen and Dick, but did not buy from them.

Cross-examination by Mr. Fink

States he got into financial difficulties—he did not go through bankruptcy—he has settled nearly all his bills in full. He owes

about $8,000 more. The bills were for work he was carrying
144 on in 1919 and 1920 and which he was not able to pay at that time. He asked his creditors—that is, those he bought from before the building was started—to wait awhile. This was before he got into trouble. It wasn't on this account that he couldn't buy the material, he had plenty of money. The first interference by Brims was in 1919, doesn't just remember the month, possibly in February or March, perhaps April. Mr. Church brought a card and put right on the back of it and said, "This work is stopped by order of William Brims." That is the men were not to work on nonunion material. The first time they called his men off and stopped them from working on nonunion material, surprised him, although he believes he had signed the card or agreement before that, he may have signed it later. He had quite a mixup on the card business on account of him paying the business agent and the business agent not turning the money in, so he didn't get the card until sometime later. He knew in a general way the attitude of the unions with reference to the use of nonunion material and he knew about article 3 in the agreement. He thinks the card left by Church said, "This work has been ordered stopped on account of nonunion material, by order of William Brims." He never offered anyone any money to fix up the difficulty. He did go down to see Mr. Cohlgraff, of the Carpenter Contractors' Association, to see if he couldn't do something for him. Cohlgraff said, "Pottinger, you are not a member of the association," Pottinger said, "I will join, then." Cohlgraff said "all right." He gave Cohlgraff a check for $200.00 and joined the association, and Cohlgraff said, "We will see if we can get it fixed up." Something did come up about getting it fixed up and giving some money, he doesn't remember how it was. He said, "I will give them a car or automobile if they will fix it up. An automobile."

He would give them a car so he could go ahead and use the material. This was on the second job, the forty-four flat building and the material was purchased from Anderson & Lind. The carpenters' union would not permit it to be installed. He wanted to get the building done and he went into the association and he finally said he would give a car to get it fixed up—that is, if they would fix it up so he could install the material. He never gave the car. Nobody fixed it up. They made arrangements to fix it up. They didn't install the material.

145 Cross-examination by Mr. McKinley

He never joined the associated builders; he got his money back.

Redirect examination by Mr. Fowler

He endeavored to buy union material here in Chicago; he could buy it from Rittenhouse & Embree. When he bought it from Anderson & Lind he tried to get figures on it from others, but he was told they were too busy; also Rittenhouse & Embree was too busy. That is the reason he went to Anderson & Lind.

Recross-examination by Mr. Fink

He thinks there are copies of the letters he wrote trying to get material from different manufacturers in the case now pending between Anderson & Lind and the union. He never talked to anyone else connected with the associated builders except Mr. Cohlgraff, and he never saw anyone else there. He saw Mr. McKinley out at the building one morning, probably saw Mr. McKinley with the associated builders, but he doesn't remember McKinley telling him the reason he couldn't join.

Recross-examination by Mr. Childs

He installed about three-quarters of the material he got from Rittenhouse & Embree; some of it was stamped with the union stamp or label and some was stamped "O. K., Building District Council." This material was doors, sash, and casings. The doors were stock doors. A stock door is a regular two-panel door, a panel below and above, two feet ten inches by six feet eight inches. He bought this stock from Rittenhouse & Embree when he couldn't use the other; he believes it was in 1920. He doesn't know if some of the stock doors he got from Rittenhouse & Embree came from a Wisconsin mill; he knows they had an O. K. by the district council on them.

Redirect examination by Mr. Fowler

He employed union carpenters all his life; there were non-
146 union carpenters here in Chicago, but he employed union carpenters all the time. He never had trouble with the carpenters themselves quitting work; it was just when an agent came around; they would obey the agent when he gave orders.

Mr. L. G. Anderson, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

His name is L. G. Anderson; he is in the millwork business. The Anderson & Lind Company incorporated in 1906, but he has been in the millwork business for twenty-six years. The name of his company is the Anderson & Lind Manufacturing Company; it is located at 2127 Iowa St., Chciago, Ill. At one time they were members of the lumbermen's association, but whether that made them members of Division G he doesn't know. They met with Division G, and he was present at a number of their meetings. He attended the meetings in 1918 and 1919, when article 3 and the discount question were under discussion. He attended several meetings during those years and heard the discussion then had. He wouldn't say he joined in the discussions, although he voted on different occasions. He has a brother younger than he who is associated with him in his business.

He also was present at most of the meetings. His health now is very bad. He remembers one meeting when a committee from the contractors' association was present, and prior to this time the question of discount had been under discussion from time to time at the meetings.

Exception by counsel on behalf of union defendants on account of their absence from there, to which ruling of the court the defendants, and each of them, by their counsel, then and there excepted.

The discussions with reference to the discount took place about May 1st, 1919. The millmen were discussing a trade discount which they intended to give the contractors; if he remembers correctly, it was twenty-five per cent to start with, and then it was finally reduced to fifteen per cent. At a meeting which the contractors' committee attended something was said about a change in article 3 in the agreement between the district council and the contractors. The committee from the contractors
147 association, he thinks, was composed of William Doyle, president of the contractors association, Mr. Hansen, of Hansen Brothers, Mr. Green, ex-president of the contractors' association, and Mr. McGimsey. He thinks both Mr. Doyle and Mr. Green made speeches. He doesn't recall what Mr. Doyle said; he thinks Mr. Green said that the contractors had entered into their agreement with the union on the promise of the millmen to grant a trade discount. This was said by Green in the open meeting. He said the millmen's association was responsible for article 3 being in the agreement and that Harry Morris was responsible for it more than anybody else. He thinks Mr. Morris was present and he recalls that Morris did not make any denial of this assertion. He thinks Mr. Reynolds, of the millmen's association, was also there, also Mr. Rinn and Von Platen and Dick were there. He remembers no speeches being made by members of the millmen's association. He doesn't remember what was done after the committee from the contractors association left, and he doesn't recall if anything was done after that at that meeting. He doesn't recall anyone who belonged to the millmen's association, on that occasion, denying the statement of Mr. Green that it was the millmen's association that was responsible for the change in article 3. He was present when the question of the discount was voted on, he thinks at two meetings. He thinks it was voted down once, that is the twenty-five per cent trade discount; that the amount of the discount finally allowed was fifteen per cent. Approximately twenty to twenty-five were present at that time, he thinks they were the only ones who voted against it, that is his concern. The Chicago Sash & Door and Blind Co. didn't vote and he doesn't know of any reason they assigned for not voting. He is engaged in manufacturing and selling inside trim; he doesn't manufacture doors or windows. He use to manufacture window frames, that is in 1918. In 1918, 1919, and 1920, they purchased their doors from the Paine Lumber Co., the R. MacMillan Company,

and the Rock Island Sash & Door Company, of Rock Island, Illinois, he is not sure whether or not they purchased any from Farley-Lichter & Company or the R. MacMillan Co.; this included the three years, 1918, 1919, and 1920, and up to date of this indict-
148 ment, September 2d, 1921. The Paine Lumber Co. and the MacMillan Company were located at Oshkosh, Wisconsin.

Objection by counsel for union defendants.

Objection overruled. To which ruling of the court, the defendants and each of them by their respective counsel, duly excepted.

They bought small lots from the Morgan Sash & Door Co., but not to amount to anything; they had a warehouse in Chicago, their factory was in Oshkosh. In taking orders for windows and doors, we would have them shipped mostly to the warehouse, sometimes they would be delivered direct to the building; that is, they would be taken from the car to the building.

He knows William Brims, and during the period from 1918 to 1921, he was connected with the district council—for some time he was president of the council. He had talked with Brims in May, 1918, when Brims called at his office in regard to unionizing their mills. Mr. Bromley was with Mr. Brims at the time. Brims said he had received our letter and he thought he would come up and see us, and he asked us of course to sign up the agreement with the union, and he said if we did, he would stamp all the goods we have on hand with an O. K. stamp, and all the goods we had purchased up to a certain date. At this time we were running an open shop, he doesn't know if they had union men employed, he never asked them. He made no discrimination between union and nonunion men. He asked Brims at this time if he didn't think article 3 was a violation of our injunction and Brims said he didn't think so, that he had been advised by their attorney that it was not.

Q. Did Brims say anything to you about cheap outside material in that conversation?

Objection by counsel for union defendants. Objection overruled. Exception by defendant and each of them.

Brims told me that article 3 applied to open shops as well as to nonunion shops; that nothing but union made mill work would be allowed to be used in Chicago and that union material that was not manufactured on the same wage basis, taking the freight into consideration, would not be permitted to be used in Chicago. He doesn't recall any reference to any particular mills on the
149 outside. The mills from which he purchased material, he was told were open shops. There was no stamp on the material purchased from those mills that would indicate whether it was union or nonunion material. Brims said if they could keep this cheap out-of-town stuff out it would help get better prices for the Chicago mills and help inside men to get better wages. This was said in the same conversation. His recollection is that Brims did all the talking and that Bromley said nothing. He states they manufactured a large portion of their inside trim and some of it

they bought; he doesn't believe they bought any from the outside in 1918, may have in 1919 and 1920. During those years he sold material to any class of people wanting to buy it, builders, contractors, and owners. He believes that at that time there was a class of people here in Chicago known as scalpers, as for instance, Fisher & Madson and P. A. Russell. The scalper just has an office and sells and buys mill work, he has no machinery and no lumber yard—they made sales and bought their materials from others. He believes there were fellows running lumber yards that had no machinery and were distinct from millmen. Mr. Traeger, of the Von-Platen & Dick Co., told him on one occasion that it would be too bad if he would be compelled to buy doors from their competitors; Traeger asked him at one time, he believes it was outside of the meeting, what they were going to do now that article 3 was put in the agreement; this was coming home from one of the meetings. He told Traeger that if they wouldn't permit our material to be used, he would try to get work in other places. During those years we did offer our goods to contractors in Chicago and they refused to take them, they said they would not be permitted to use them. Robert Pottinger, for one, said he couldn't use any more material.

Objection by counsel for union defendants. Objection overruled. Exception on behalf of defendants and each of them.

Pottinger said they would stop his jobs and would not permit him to use our material. Paul Jensen also refused for the same reason and he said his work had been stopped and they would not allow him to use it. We sold Jensen a lot of millwork for various buildings. He took it and then started to use it and was stopped from going ahead with his work. He believes his brother had
150 prepared a list of those who would not figure with him for that reason. Robert Pottinger said that after he had the trouble on his jobs that he couldn't buy any more material from us. Identifies list prepared by his brother, and states that he remembers personally that the following people said they couldn't use their material—Carl A. Carlson, 2136 So. Cicero Ave.; Carlson and Erickson; Taff and Levin, B. J. Regnell Company; Joseph Siegel, who said he was stopped on one job and that he couldn't use any of our material; Harry Lieberman; William J. Warner and Edward J. Panos; all of whom told us they couldn't use our material. He had a person knowledge of these matters and his comapny tried to get a chance to figure with them. Identifies a list of those who actually figured with his company, but stated a reason why they could not use the material; states that Chester M. McGrath & Co. figured for it, but said that they had taken it up with the district council and the district council had told them they could not use our material.

Christ Nelson, 1335 N. Waller Ave., said he was not permitted to use our material; he said the district council said they could not use it; he said our figure was lower and he would like to give us the job, but he said he had called up the district council and he was told

he could not use it because he would have trouble. Gunderson Brothers told us they were afraid that they might have trouble and they didn't dare give us the work. That is all he can recall where he can remember what was said.

He knows Harry Jensen and had a conversation with him about in December, 1920, at the Anderson Lind office, a couple of times, also once over the telephone that he can recall, and once outside the Cook County grand jury room. Jensen came over to our office and told us that they were carrying on an investigation of their own and they were trying to see if they couldn't find out where there had been graft paid, and so forth, on different buildings, and he said he understood we had a lot of checks and books and papers, etc., and we might be able to give him some information. He said the matter was discussed and that all the jobs we had furnished on the north side, that either the owners or contractors had paid graft on every single one of them in order to be permitted to use our material.

He (witness) states that during the year 1919, when
151 the rush was on, they called the offices of the Hardwood Products Company for prices. He forgets who he spoke to, but believes it was a Mr. Becker; that Mr. Becker said he would have to take it up with Neenah, that is their home office. He doesn't remember whether or not they made any price. He didn't buy anything from them until recently; that is during the last year, when he bought a couple of cars from them.

Cross-examination by Mr. Fink

He had no reason for not believing Mr. Green at the meeting when Mr. Green said that the contractors had entered into their agreement with the outside carpenters on account of the promise he said the millmen had made to grant this discount. He knew that article 3 had been voted down several times. He thinks Mr. Green was asked by the millmen to go over to the meeting and to try and get the millmen to agree on some discount. He presumes he was trying to get this trade discount out of the millmen. He was asking for a trade discount; he said it was promised to them and he thought that they were entitled to it and that the millmen should live up to their contract. He believes the whole purpose of his being there was to get a trade discount. Green had no other purpose he knows of for being there except to get this trade discount. He may have been using every argument he could think of to get a trade discount, but he can not tell. There was nothing definite decided that evening whether the millmen would give it to him or not. He couldn't say how many times the question of a trade discount came up in the millmen's meetings; it had been discussed several times; but whether it was prior to this meeting, he couldn't say. He thinks Green only wanted the trade discount given to members of his association.

Objection by counsel for contractor defendants.
Objection overruled. Exception.
When the millmen voted on the trade discount, he doesn't recall whether that was only for members of the contractors' association or all contractors, but he believes that the fifteen per cent trade discount applied to all of them.

132 He thinks that when they voted on the twenty-five per cent trade discount, the majority voted not to grant it to all, and when they voted on the fifteen per cent trade discount it applied to everybody. He doesn't recall if article 3 was very much discussed; it was the trade discount that was discussed the most; article 3 may have been referred to occasionally. During meetings of Division G he attended in 1918 and 1919, he recalls a Mr. Green as having mentioned article 3; he doesn't recall anyone else as having mentioned it. He thinks he knows Mr. Peter Beck. Identifies Mr. Beck as man he knows. He doesn't recall hearing Mr. Beck express himself on the floor as being opposed to article 3; he recalls that a number of them were opposed to the trade discount. He thinks that at some of the meetings Mr. Beck was opposed to the trade discount. He knows Mr. Collins; he can't recall anything in particular that Mr. Collins said about the trade discount; his recollection is that the concerns buying the most material were opposed to it. He recalls Heitman talking against it; also Mr. Dodd. He doesn't remember Bartelman of I. W. Bartelmann talking about it. He doesn't remember Bartuska discussing the matter. He remembers the Chicago & Riverdale Lumber Company at some of these meetings saying that the bulk of their work, or practically all of their work, was out-of-town work and that they were not interested in it. He doesn't recall anything said by Mr. DeSwarte. He doesn't recall Dick being opposed to the 25% trade discount, and that Mr. Rinn called his attention to the fact, and that Mr. Rinn said to Mr. Dick, "You are one who proposed the 25% trade discount." Dick said, "Yes; I have changed my mind now." He doesn't remember anything being said by Diersen nor anything said by Dietsch. He doesn't remember when Gamble spoke for the Riverdale Lumber Co., or whether it was Decker or Hammer. His recollection is that they attended very few meetings. He recalls some one expressing themself on behalf of the Riverdale Lumber Co., but doesn't recall whether it was Gamble or some one else. He doesn't remember if Louis G. Haring, of the Melrose Lumber Co., was present at one of the meetings when the discount was discussed, or not. States that Mr. W. A. Irvine was opposed to it; he doesn't believe he attended all the meetings. He doesn't

133 remember ever seeing Theodore Kartheiser at any of the meetings. Harry F. Morris was at some of the meetings; he doesn't recall what he said about it. Doesn't recall anything Mr. August Newquist may have said. He recalls John Olson being at one meeting and believes the trade discount was discussed at that meeting; and if he remembers correctly, Olson was chairman of the

meeting at the time, and he refused to act as chairman because he wanted to be free to express himself. His recollection is that he was opposed to the trade discount. He doesn't recall anything said by Mr. Thos. Reynolds. He remembers George P. Rinn saying at one meeting where the wage question was discussed that he wished they had more members like the Anderson & Lind Mfg. Co.

Motion to strike the last answer by counsel for defendants. Motion sustained.

He doesn't recall George Rinn saying whether or not he was opposed to the trade discount. He believes that Mr. Arthur Root was in favor of granting the trade discount to all contractors. His recollection is that Mr. Traeger opposed the 25% trade discount, but voted for the 15% discount. He doesn't remember Mr. Westberg expressing himself. He doesn't recall if he knows Mr. Weidner. Anderson said he made no discrimination among his employes as to nonunion or union men. Says that he had union men working and that they were called off. He did not know that the unions had a rule not to permit their members to work with nonunion men. He did not know that they had any rule where they did not permit union men to work in an open shop; that they possibly would not permit nonunion men to work in union shops. States he had union men working for them for years, and did not know there was any objection on the part of the union to that. He could not say what proportion of his employes in 1918, 1919, and 1920 were union and nonunion men. They had a few union men; he believes the majority were nonunion; he doesn't know what per cent were nonunion men. They did not ask the men when they wanted to hire them if they were union or

States that Traeger once remarked to him that it was too bad if they were going to be compelled to buy from their competitors. He mentioned he would not like to be put in such a position that he would have to buy from William Morris; that if they were not
154 permitted to buy from the outside and would have to buy from union mills he figured that William Morris was perhaps one of the best-equipped factories to turn out doors, and that probably would be the place where they would have to buy. He states that from that he understood that Traeger was not much in favor of article 3.

Cross-examination by Mr. Streeter

He was present at the meeting of March 18th, 1919, when the 15% trade discount was adopted; he believes that the agreement provided in article 2, to give all carpenter contractors on estimated price, a trade discount of 15%, that that is the way it was finally worded. He heard the discussion leading up to the adoption of the agreement. He believes that when the agreement was read Mr. Arthur Root made a statement on behalf of the committee and stated that there

should be no misunderstanding, that the agreement should apply to all carpenter contractors, whether they were members of the association or not. That Mr. Root stated he was going to ask for a specific resolution, so that no one could misunderstand him, and that he (Root) introduced a resolution, which was seconded by Mr. Beck, as follows:

"Resolved that the agreement as submitted be ratified, with the understanding that it applies to all carpenter contractors in Cook County, whether members of the Carpenter Contractors' Association or not."

He remembers that that resolution was adopted.

Cross-examination by Mr. Cattell

He knows the Chicago & Riverdale Lumber Company, and he recognized Mr. Gamble, who is pointed out to him. He doesn't remember seeing Mr. Gamble present at many meetings; he saw him perhaps two or three times. He knows Mr. Dekker, the secretary of the company; he doesn't recollect seeing him at many meetings. At the meetings when the trade discount was discussed Mr. Dekker may have been one who protested against the allowance of any trade discounts; he may have been one who spoke for the Riverdale Lumber Co.; that whoever represented the Riverdale Lumber Company at that meeting was opposed to it, and so expressed himself, and
155 stated that they bought their material outside. He states that Payne & Gould and other outside mills told him that the Chicago & Riverdale Lumber Company was buying its sash and doors from them, and these were nonunion mills. Payne & Gould is one of the mills described in the indictment, and is the largest manufacturer of doors and windows in the United States. He recalls the Riverdale Lumber Co. representative saying at one of the meetings, but does not recall which meeting, that they bought their stuff outside and they sold their stuff outside.

Cross-examination by Mr. Thompson

Says that the Anderson & Lind Mfg. Company have a controversy with the union back to about 1912; there has been trouble more or less intermittent since 1912. He never understood that when Mr. Brims or Mr. Bromley talked with him, during the past three or four years, since 1918, or any other representative of the union, along the line of interfering with his material or any other material, that what was going to happen was that union members would not be permitted to install nonunion trim; states that in most cases union members would install it if they were not interfered with. Mr. Jensen of the carpenters' union said that they would insist more than ever on not permitting nonunion millwork to be used in Chicago, that they were opposed to having it in the written agreement

and they would handle that through their locals. He doesn't recall any representative of the union saying they were going to do anything else other than to refuse to install it. He doesn't know if that was the only thing they were going to do, and things they were more interested in not installing his material than nonunion material. He felt it was more of a personal attack on him, but as regards him or his mill the only thing the union did was simply not to install it. Says that a number of contractors were willing to install his material, but they were afraid the business agents would cause trouble on the jobs and not permit the men to install it. That the whole question was whether the union would permit carpenters to install their material, and not whether the men were willing to install
156 it. He did not know that there was anything in the constitution of the union that would prohibit union men from working on nonunion material. He has had a lot of litigation with the unions; has listened to evidence and had seen an abstract of the evidence; he doesn't remember it being in the constitution of the united brotherhood that it shall be the duty of union men to demand the union label. He believes that the constitution that was put in evidence in this case is the same as in the other court. His firm joined the lumbermen's association, they were classed with Division G, and he attended the meeting of Division G. His brother and himself may have been officials of that organization at certain times. He doesn't believe that his brother was a member of the executive committee of the millmen's association during the time in question. He believes he joined the millmen's association in the latter part of 1915; that the reason he joined was that the millmen's association solicited his membership; that he had no certain benefits in mind that he would derive from joining it.

He doesn't know that the primary purpose of the millmen's association was to negotiate working agreements with different labor unions that they employed, thought they were organized as a social club. At the time he joined the association and became an official of it, he thought the association had a contract with the carpenters' district council for the inside workers; he doesn't recall seeing any of their agreements. Identifies a document which may be one he introduced in the contempt proceedings between Anderson & Lind and the carpenters' district council.

Document marked as union defendenats' Exhibit 1 for identification.

He heard that when they joined the lumbermen's association, they had a working agreement with the carpenters' union; that he did not intend himself to become a party to the agreement, he took precautions in advance to make sure he would not be obligated and took it up with the association before be joined. He did not expect to get any benefits although he joined and paid a fee. He never asked the carpenters they employ in their shops whether they are union or nonunion men. He has refused to have any dealings or make any agreements with the union; they have not during the past sev-

157 eral years at any time employed union men exclusively. He feels that when they sell their material that the union carpenters ought to install it if they were willing.

Objection by counsel for Government as to how witness feels about it. Objection sustained. Exception by counsel for defendants and each of them.

He considered the whole course of conduct of the union was directed more against him then any other manufacturer. He believes it made a difference as to the conduct of the unions, whether material was manufactured in his shop or whether he bought it from Wisconsin, or any other State; that he was told that union goods made out of town was not made on the same wage scale as in Chicago. As far as he knows in his dealings with the unions, he doesn't think it made a bit of difference whether the material was manufactured in Chicago or bought in Wisconsin. That the whole thing simmered down as to whether or not it was material that bore the union label, if it was manufactured under the same conditions as in Chicago; that so far as any material he knows of, he thinks the only point in question was whether or not it bore the label. Says that union men were called out of his shop in 1912, when the difficulty first arose.

Redirect examination by Mr. Fowler

Says that the following is not a correct explanation in the minutes of March 18, 1919, as to why he voted the way he did. The explanation reading as follows:

"Upon roll call, all voted aye except the Chicago Sash Door and Blind Manufacturing Company, whose representative stated that he did not wish to vote on the matter in the absence of Mr. Dierssen. Also Anderson & Lind Manufacturing Company, who voted "no," explaining that as their shop was nonunion, therefore not using the union labor, the Carpenter Contractors' Association could not install their work, consequently the agreement was of no interest to them."

Says that Mr. Lockwood asked him what his reasons were for voting "no," and he said:

"Why should we vote in favor of granting a trade discount to an association that has entered into an agreement with a labor
158 union, which, if enforced, would prevent us from doing business in Chicago, Cook County, and the vicinity."

States that Mr. Rinn said:

"Aren't you afraid that some one will bring this back to the association?"

That he (witness) then said:

"If we would have to depend upon the members of the association for business, we would have been out of business long ago. That we sold more jobs to union labor men and to independent contractors and owners than we did to members of the association."

States he did not say that they operated a nonunion shop. He never used that expression at any time or to anybody. That when he said "selling to labor unions," he meant to members of the carpenters' union, whoever wanted to buy millwork. He believes that a short time after article 3 had been adopted, Mr. Haring, of the Melrose Mill Company, wrote him a letter; he doesn't recall having a conversation with him. He has the letter with him. Letter handed to counsel for Government. Letter offered as Government Exhibit No. 65. Whereupon document referred to was marked Government's Exhibit 65.

Government's Exhibit 65, read as follows:

"This is a letter from L. C. Haring, of the Melrose Mill Company, Chicago, under date of December 13, 1918, addressed to Anderson & Lind Manufacturing Company, of Chicago (reading):

"Gentlemen:

"A proposition was put to me to establish a cooperative stock company to manufacture both hardwood and softwood doors in Chicago under union conditions, so as to supply the wants of Chicago dealers, handlers, and manufacturers of millwork with their stock door requirements without being obliged for each one to put in a complete door department, which under business conditions could not compete with a complete factory making nothing but doors.

"If the above appeals to you, I will be pleased to hear from you on or before next Tuesday, when this matter can be brought up in the millmen's meeting.

"Please answer the following questions:

"Are you in favor of a proposition as above outlined?

159 "About how many doors do you buy in a month or in a year in normal times?

"This answer is important so as to determine what capacity to figure on in case a door factory is to be launched.

"How much stock could you take or subscribe for to finance this proposition?

"Any other suggestions you have to help to get your doors, also sash, made under union conditions.

"Please consider this answer thoroughly and give me the results of your conclusions as soon as possible.

"Yours truly,

"MELROSE MILL COMPANY,
"L. C. HARING."

Cross-examination by Mr. Childs

He has been in the business of manufacturing millwork in Chicago since 1895. He has worked at it since 1893. He has been conducting a mill since 1895 and is still engaged in that business. During the period from 1917 on until the fall of 1921 he manufactured millwork in his mill; that is, millwork for buildings; that is, they manufactured part of the cabinet work for buildings, part of the trim.

part of the frame. They bought some trim, also bought some cabinet work and frames, also bought their doors and sash. They did not manufacture everything except doors and sash. The trim they purchased was interior trim for buildings—trim is casing, picture moulding, chair rails, and material of that kind. They manufactured picture moulding, but also bought some. They manufactured some baseboards and also purchased some. They manufactured no doors or sash, except occasionally they would assemble an odd door. They had no equipment in their plant for manufacturing what is known as stock doors. Doors that are carried in stock are called stock doors—what might be stock for one might be special for somebody else.

Payne and MacMillan and other manufacturers in Wisconsin manufacture what is called stock material; they have special designs that they class as stock; they manufacture doors and turn them out in wholesale quantities. Says his concern purchased from these outside companies odd doors as well as stock doors. It might
160 have been the policy of the labor leaders in the spring of 1918, when the unions adopted the policy of refusing to work on nonunion material, to so refuse—he doesn't know if the men on the job refused to work on nonunion material. That so far as his work was concerned, which was manufactured in a nonunion shop, he doesn't know of any case where the carpenters refused to install it. Says that the material on the Pottinger job was not installed; also on the William J. Warner job—the latter kept the material and probably used it on buildings later, but it was not installed on the buildings which it was shipped to. He believes that on some of Paul Jensen's buildings material was not installed; doesn't remember the addresses of the buildings, but thinks some of them were on Haddon or Potomac Avenue. Says that Jensen told him that officials of the union would not permit the men to install nonunion material—he doesn't know if the men working on the buildings refused to install it—he didn't talk to any of the men on the buildings. Some nonunion material was installed on the Jensen jobs; he doesn't know on what particular jobs without referring to his records. States that in the years 1918, 1919, and 1920 there had been at least fifty buildings where they were not permitted to install nonunion material for a certain period of time, and that after some time elapsed they went ahead and installed it. Says they have built buildings for Anderson & Lind, where Andrews and Sundien told them they would not permit the carpenters to install it. Another job is Johnson Brothers, in Oak Park, also Charles M. Anderson, on Potomac Avenue. He does not class his material as nonunion; he classes it as open-shop material. The material shipped to Johnson Brothers was installed on that job; a large portion of it was manufactured in Oshkosh, Wisconsin.

The material installed on that job consisted on framework, doors, trim, and cabinet work—the doors and sash came from some Wisconsin mill, and the carpenters installed that material on the job. He

is not sure if the building for Anderson was on Potomac or Haddon Ave.—on this job he manufactured some of the millwork and bought some; he doesn't recall if he bought it from a Wisconsin mill. All this millwork was actually installed on this job after considerable delay. He belonged to Division G from 1915 on until April or May, 1919, when he resigned. He testified about a meeting
161 in which Mr. Green made a speech; doesn't recall the date, but he thinks the minutes would be correct as to that. This was in June, 1918. He believes he remained a member of Division G from June, 1918, up until April or May, 1919. He may be somewhat familiar with the general nature of the business of other members of Division G. He was of the opinion that the Chicago & Riverdale Company bought the greater portion of their material, as he was told by representatives of these out-of-town mills that they sold them since 1918. He doesn't know if the Chicago & Riverdale Company since 1918 has bought large quantities of nonunion material. He believes that Barr & Collins is located in River Forest; thinks it is a suburban mill. He knows Mr. Collins, but knows nothing about the business of Barr & Collins, except what he has heard. He believes that the larger portion of the Chicago mills in Division G did buy doors, sash, and perhaps trim from the same sources from which he bought them. He doesn't know if the various mills who bought their nonunion material from Wisconsin and other sources were affected in the same way by article 3 as he was, so far as this outside material was concerned. He couldn't say what prices he was getting for the Wisconsin manufactured doors in 1918. He doesn't think that from 1918 to the latter part of 1920 he was boosting his prices on millwork continuously.

Objection by counsel for Government.

Objection sustained.

Exception by counsel for defendants, and each of them.

He has testified about a letter written by Mr. Haring, where Mr. Haring makes the suggestion on December 13, 1918, that a cooperative stock company to manufacture hardwood and softwood doors in Chicago should be organized. He heard rumors that such a movement was being considered. He doesn't know that the object of the movement was that a group of Chicago mills who had been buying their stock material from nonunion shops got together to organize a cooperative factory so that they could have a source of supply of stock material. He couldn't explain the letter he received from Mr. Haring—the letter explains itself. He doesn't recall if he ever spoke to Mr. Haring about it or not and he doesn't recall speaking to any of the millmen about it. All he knows
162 about the letter is that he received a copy of it and placed it in his file. He knows nothing about the plan.

Cross-examination by Mr. Fink

The volume of his business in 1918, as measured in dollars or gross business, was about 15% of what it was during the last year.

H. M. ANDERSON, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

His name is H. M. Anderson, he is a nephew of L. G. Anderson who formerly testified in this case. He is employed as a clerk for the Anderson & Lind Manufacturing Company; has been employed there fourteen years. He has sold material for them and has sold material as far back as 1918 here in Chicago. During the years 1918, 1919, and 1920 and up to September, 1921, he tried to sell material for the company and could not do it for some special reason that was assigned. He remembers specific instances of this kind.

Objection by counsel for defendants. Objection overruled.

Exception by counsel for defendants and each of them.

The instances in question are Hugh McLennan, Gunderson Brothers, C. B. Johnson & Sons; they were contractors and builders. He doesn't know if they ever sold these people material before this or not. He spoke to them personally about this, and the reason they assigned was on account of the agreement, they were afraid to take a chance in using our material on account of the union label not being on it.

Cross-examination by Mr. Thompson

He never tried to sell these men before and he doesn't know of anybody else who did for his firm.

163 A. G. JOHNSON, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

His name is A. G. Johnson, he is outside man and solicitor for Anderson & Lind Manufacturing Company and he sells material for them and has been with this firm for about nineteen years. He has been selling material for them for about seventeen years. In 1918, 1919, 1920, and up to 1921, he tried to sell material to people who refused to buy it and assigned special reasons for so doing. The reason they assigned for not buying was because we didn't have the union label on our material. The specific instances are as follows: Carl A. Carlson, of Cicero; P. J. Regnell Company, located on La Salle Street; A. W. F. Peterson Company, who at that time were located over on Jackson Blvd.; William J. Warner, out on the south side; Thorgusson & Ericcson. That is all he can recall just now.

No cross-examination.

NIELS BUCK, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

His name is Niels Buck, he lives at 5332 Kenmore Ave., his business is that of architect. He builds houses for himself and has been engaged in the building business for about twenty six years. He belongs to the contractors' association. He was doing some building in the years 1918, 1919, and 1920. In 1919 he was building an eighty eight apartment building for his wife, Mrs. Buck, on the corner of Sunnyside and Robey Ave. Shell & Anderson were the carpenter

contractors and they got their material from the Madson & Ibsen Company on Ogden Ave., in Chicago. They manufactured part of the material themselves. Part of the material that went into this particular building came from the Ibsen Manufacturing Company on Elston Ave. He doesn't know if they are the Chicago representatives of the Gould Manufacturing Company.

Objection by counsel for union defendants. Objection overruled.

164 He was not constructing any other buildings at that time, but was a little later on. He built a couple of hundred bungalows after that, located in different parts of the city. The inside trim, doors, and windows and material of that kind, he bought from a man named Carlson. Shell & Anderson contracted for it for him. This material came from Madson & Ibsen—he isn't positive if it came from the Ibsen Company. He doesn't remember the prices on the doors for the bungalows.

No cross-examination.

WALTER E. MADSON, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

His name is Walter E. Madson, he is in the sash, door, and interior finish business and is connected with the Madson & Ibsen Manufacturing Company. They manufacture interior finish—they do not manufacture doors or windows. They manufacture mouldings—they sell doors and also windows. The doors and windows they purchase from the C. L. Ibsen Company. The C. L. Ibsen Company get their material from the Gould Manufacturing Company and Roach & Musser Company, the latter being located in Muscatine, Iowa, and the former in Oshkosh, Wisconsin. He states that the Madson & Ibsen Manufacturing Company furnished the material that was sold to Shell & Anderson, and which was used in the apartment house that was being built by Mr. Buck. They furnished the entire contract for the building, including sash, doors, and interior finish. The amount of the contract was somewhere around $15,000.00. The sash and doors were bought from C. L. Ibsen Company and they got it from the Gould Manufacturing Company at Oshkosh, Wisconsin. States they had no trouble about installing it—it was nonunion made goods. He did not go up and select the material himself—states that Mr. Ibsen is the representative of the Gould Manufacturing Company at Oshkosh and that he sold the material as the agent of the Gould Company. The material did not have a union label on it and there was no trouble in installing it. When it first came it did not have the union label on it. He says arrangements were made

165 for the installation of this material; that Mr. Shell, of Shell & Anderson Company spoke to him about it; that is, about installing this particular material. After he had a conversation with Mr. Shell, he had a conversation with Mr. Wright—Charles Wright, who was a business agent for the carpenters' union, at a saloon up on Lincoln Ave.

Objection by council for Mr. Wright, as to witness stating what conversation was with Mr. Wright. Objection overruled.

Exception by defendant Wright, by his counsel.

Says he was introduced to Wright through Shell & Anderson; there was something said about putting on nonunion made sash and doors on this particular job and he met Mr. Wright, and there was a price stated of about $1,000.00 to permit it. He stated they could not do that and Wright would not give an answer as to whether he could let the material go through at that particular price, that is $1,000.00. He (Wright) said he had to consult with some one, but did not say who. He (witness) met Wright later and the price agreed upon was $500.00. He doesn't remember where he met Wright the second time, whether it was at the building or at the same place, it was three or four days after the first conversation, possibly a week. We then agreed to pay him $500.00—$250.00 was paid him on one occasion and $250.00 on another occasion. The lumber was installed without being stamped. He thinks that union carpenters worked on it. He did not hear Wright give any instructions with reference to the matter. Says that they furnished material to a man named Carlson, a carpenter contractor for the bungalows being put up by Mr. Buck. Says that he himself had a one-third interest in the matter—that Mr. Fred. Buck and Mr. Donald Buck and himself were interested. Says there was to be one hundred bungalows to start with; that they furnished 89. The moulding for the bungalows they manufactured themselves; the windows were purchased from the C. L. Ibsen Company, the doors from the same people. That Ibsen got the doors from the Gould Manufacturing Company or from Roach & Musser, he doesn't know which. He didn't go to Oshkosh to look at any material for that particular job. He never had any trouble about installing that material in those bungalows. He made the same arrangement on that job as on the eighty-eight flat job, with Mr. Wright. He paid Wright seven hun-
166 dred dollars for permission to install that material; the seven hundred dollars was figured at the rate of about seventy cents a door, figuring one thousand doors. He did not pay him the seven hundred dollars all at once.

Objection by counsel on behalf of Defendant Wright. Objection overruled.

Exception on behalf of Defendant Wright.

The money was paid in two installments of $350.00 each. The doors were stamped—Wright stamped them. At the time Wright stamped them, the doors were in Mr. Ibsen's warehouse on Elston Ave. He doesn't remember who took Wright over there. He says he was in the room when Wright was stamping them and saw him stamp some of them. There was somebody else with Wright at the time, but he wasn't introduced to him and he did not speak to him. He doesn't know who it was. He doesn't remember of having ever paid anybody for the installation of material on any other job;

these two jobs are the only ones he has in mind. He doesn't remember whether the company on any other job, paid anything. Says that they had a contract with the Bessinger Construction Company to furnish fifty two-flats—that they furnished only nine of the fifty. That when they signed the contract with the Anderson Construction Company, they figured the job on furnishing doors and sash as nonunion made; the mouldings were to be union made—that was agreed upon. They were not to pay any money or assume any responsibility as to how the goods were to be put in. He doesn't know if any money was paid for the privilege of putting it in. He thinks that the price of the doors for the bungalows was something like $8.50 per door, from $8.00 to $8.50 per door. He gave his testimony before the grand jury and he thinks his recollection at that time was more fresh than it is now, that was two or three years ago. He doesn't remember what price he stated before the grand jury that he paid for the doors. There was a difference between the price of these doors and the same doors here in Chicago.

Objection by counsel for defendants. Objection overruled.

The union-made door was higher, how much he doesn't know. These bungalows were constructed in 1921, in April. The contract was signed before that time.

167 Cross-examination by Mr. Fink

He is thirty-seven years old and is vice president of the Madson & Ibsen Company; he is a stockholder and director of the company. He doesn't know whether when he talked to Mr. Wright about this matter he was doing something against the rules of Wright's union. Says they would not have paid Wright if they hadn't been solicited, or if they could furnish a cheaper material and still get by with the union; he didn't know something was being done that was opposed to the policy of the union. He knew that the unions refused to work on nonunion-made material and he knew that they would refuse to work on this particular material because it was nonunion made. He doesn't know if it was the duty of the business agent to see if the policy of the union was honestly lived up to. He did not know that he was corrupting this business agent to do something which it was his duty to prevent; the business agent approached him. After the business agent approached him he knew he was paying him money which was a bribe. His board of directors did not select him to do the bribing, neither did the president—he thinks he had the proposition up with his father at that particular time—his father did not tell him to give a bribe. He had not done any other bribing in the course of his career other than this and he has done no bribing subsequent to this time. He spoke to Mr. Ibsen with reference to what he had done in connection with bribing. Mr. Ibsen was in on part of it. He first talked to the Government agents about it when he was subpœnaed to appear before the grand

jury. The Government agents found out that he handed this bribe to Mr. Wright through the C. L. Ibsen Company, he thinks through Mr. Ibsen. He doesn't know if Mr. Wright was put on trial by his union for accepting that bribe; he never heard of it. He was not asked to go down to the union to testify.

Cross-examination by Mr. Block

He is not a member of the Mill Owners' Association and is not affiliated with anyone. At the time he wanted some work installed he was not a member of the association now on trial in this case and he is not now a member. He was simply in that particular line of business and was a competitor. He was an officer of
168 the corporation that he represented; was vice president. He had never met Mr. Wright before the time in question: a Mr. Shell introduced him to Wright. Shell is a carpenter contractor and he had the contract for the building that he (Madson) wanted the work to go into. He met Wright in a saloon on Lincoln Ave. He doesn't know where Wright lived and he can't say as he endeavored to find out. He did call him up at his home and tell him he would like to see him; he doesn't remember how many times; he thinks more than once; and finally he got him. He first met him at the saloon and after that he had a telephone conversation with him. He called him up to see if the car of sash coming in from out of town, which was nonunion, was on the track. He didn't know if he was allowed to unload it and put it in the building unless Wright gave him authority to do it. He talked to Wright over the phone about this. Wright said it was all right, that he would take care of it. At that time he didn't offer him any money, and at that time he did not have in mind a violation of the Sherman Act. He was not trying to have something done for his profit or his company's profit—says they were forced to do it by the union—they couldn't have this nonunion material installed unless it had a stamp on it. This particular job was not objected to by anyone because arrangements were made prior to that time. He can't say how the union objected to installing this material, when he did not try to install it. He paid money to Wright, he doesn't remember the exact date, but it was around the time that he started to furnish the sash in 1919. It was after some sash had been delivered to the job, he doesn't remember how long afterwards. No one else objected to him putting that sash or work in there—they went right ahead and did the work. He thinks part of the money was paid to Wright in the saloon and part of it was paid to him in Righeimer's. He doesn't remember how far apart these payments were. He paid Wright this money to allow the nonunion material to go into the building—nobody from the carpenters' union told him he couldn't put in this material. The other payment, of $700.00, was for putting the stamp on the doors; he thinks that was in 1921 or the latter part of 1920.

he doesn't exactly remember. This was about one year after the first deal he had with Wright. He had none of this kind of work done between 1919 and 1920; the first job he undertook to carry out in
169 this manner was in 1921. They paid Wright $700.00; that is, three hundred and fifty dollars at two different times for stamping the doors. Wright was a business agent for the union in 1921—Mr. Shell told him so—he doesn't remember if Wright told him so or not. He doesn't recall the conversation he had with Wright at the time he gave him the $700.00. The union couldn't object to him putting in the material, because it was stamped; they didn't know anything about it. This last material he got from C. L. Ibsen Company in Chicago; he thinks it came from Oshkosh, because he believes he saw the invoice, although he wouldn't swear to it. He couldn't say offhand what words were stamped on this material; he compared that stamp with the one his steward was using at the factory.

The steward's stamp was the regular carpenters' union stamp. His firm employed union labor and turned out union-made work; they were also buying nonunion-made work from out of town, and in order to get by with it he found it necessary to resort to this method. He may have and may not have understood that during the time he was attempting to get this work in that he was violating the Sherman Act; he doesn't think he had it in mind at that time. He didn't think he was doing anything illegal, because if he had thought so he would have given the matter a little more thought. He did not go to the president of the carpenters' union to see if Wright had any authority as a union man, or to any other members of the union, or to the executive committee. He thought Wright had a right to do this; he must have had some information that Wright was connected with the union. Mr. Shell introduced him to Wright; he doesn't remember if he ever asked Shell why he didn't handle the deal himself. He knew that Mr. Brims was president of the carpenters' organization here in Chicago at that time. Mr. Shell did not tell him that he would have to go to Brims to get permission to do such a thing; he doesn't know that he should have gone to him. He couldn't tell offhand how many times he called up Wright's house.

Motion by counsel for union defendants that the evidence of Wright be stricken out. Wright is not shown to have been a party to any conspiracy.

Motion overruled. Exception.

Same motion on behalf of the millmen defendants.

Motion overruled. Exception.

170 Same motion on behalf of the contractor defendants.

Motion overruled. Exception.

Motion by counsel for Wright to strike all his evidence from the record.

Motion overruled. Exception.

JOSEPH J. MILLER, witness called on behalf of the Government, being first duly sworn, testified as follows:

His names is Joseph J. Miller; his business is real estate and mortgages; for the past ten years he has been engaged in the building business with the firm of K. R. Beak & Company. He had an interest in that firm. He knows Mr. Charles Wright for the past four years. Along in 1919 or 1920 he was putting up several buildings, among them a six-apartment building at 429–431 Wisconsin Avenue, Oak Park, Illinois. Axel Johnson purchased the inside trim for the building on that job; it came from Anderson & Lind; it did not have a union label on it. During the time of installing it the job was stopped for about one week; he doesn't know who stopped it. He paid Charles Wright $150 to get the work resumed on that job; this was in the summer of 1919. He paid him money on another occasion in the summer of 1919. At that time he was constructing 42 bungalows on the northwest side in a square bounded by Winnemac Avenue, Oakley Avenue, Foster Avenue, and Leavitt Street. These bungalows sold for an average price of $8,500.00 each. The inside trim for these bungalows was purchased from Anderson & Lind. He was not stopped in installing that material; there was never any interference. He paid Wright on that job because Wright informed him that the trim bore no stamp of the union, and Wright informed him that he was apt to have trouble with the carpenters in getting them to put the trim on and he negotiated with Wright to make arrangements with the carpenters to put it on. He told Wright that they would pay him for it if he (Wright) would do that without having the job stopped. This conversation took place in his office; Wright came to the office. He had left instructions at the job that if anybody came to stop it to send them to the
171 office, and Wright came to the office after that. Wright said he would do that for me. We agreed to give him two hundred and fifty dollars then; $250.00 when twenty-one buildings were completed, and $250.00 when the forty-second building was finished. He paid him the money in accordance with the understanding that the job would not be stopped and that Wright would get good men to work on the job. The job was not stopped and the material was installed. In all he paid Wright $900.00; that was the only money he ever paid him. He never had any dealings with any other agent of the union.

Motion by counsel for defendant Wright to strike evidence of witness Joseph J. Miller from the record. Motion overruled.

Exception.

Cross-examination by Mr. Block

His occupation is real estate; he was connected with K. R. Beak & Company at the time these transactions took place. The buildings were being erected for K. R. Beak & Co. When he left word in case the job was stopped for the men to come to his office he meant the

office of K. R. Beak & Co. He was vice president of that firm. This transaction that he testified to was about four years ago. At that time he had been in the business of erecting apartment buildings and bungalows for about six years—had been in business for himself. He had had previous experience in dealing with unions and he is sort of familiar with this kind of work. He never had a job stopped before. He used Anderson & Lind's trim on possibly ten jobs for himself, and he never had any trouble. Union carpenters worked on those jobs, and nothing was said. Four years ago was the first time that anything was said. He doesn't know who stopped the job of his own knowledge. The carpenter contractor, Axel Johnson, informed him about the job being stopped. He then called Mr. Wright at his home. He told Wright the job had been stopped for several days, and that Mr. Johnson seemed unable to get it started again. He asked Wright to do what he could to get the men back on the job; he told him he was just starting out, that he was a poor young fellow, in business for himself, and he wanted Wright to help him out. He was with Beak & Company at this time; he had
172 just entered a six-year career of being in business for himself, and he had no money when he started with Beak & Co. He explained to Wright that he was building those bungalows on a commission basis with Mr. Beak; that what he got out of it would depend on the success he had. He appealed to Wright on the ground that he was a poor young man just starting out, and that he would like to have this job go through without any trouble, and Wright said he would do everything he could to help me. He paid Wright $750.00 on the 42 bungalows and $150.00 on the Oak Park job. Each bungalow sold for an average of $8,500.00. He paid Wright to have Wright make arrangements so there would be no trouble on the job, and there never was any trouble on the job. He had no knowledge of the Sherman law at that time, and he did not have in mind violating that law even when he talked to Wright. He thought he had a right to do what he did. He did not call up any other members of the carpenters' union to verify if Wright had authority to do what he did; he relied on what some one told him; doesn't remember who it was, but it was not a member of the carpenters' organization. He took this man's word and gave the money to Wright under the impression that Wright could stop the job or let it go on. He had been in the building business for six previous years and had been in touch with the carpenters' organization before. He never had occasion to meet Mr. Brims in connection with the erection of these buildings—Mr. Metz was the only man he ever talked to. He never had occasion to find out their rules or regulations, and being a novice and just starting building he was told to see Wright. That was the only time he ever gave Wright any money.

Motion by counsel on behalf of all defendants to strike testimony of this witness from the record. Overruled.

Exception.

C. H. FISHER, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

His name is C. H. Fisher; he is in the millwork business, and was in that business in 1918 and 1919; that is, he was in the scalping business. By scalping is meant
173 that no stock is carried, jobs were sold directly to the contractor and then delivered to the builder. The business he turned over to various mills, large and small, and the material was delivered to the job. Some material was purchased from northern mills and some from Chicago mills. The sash and doors were bought from the Oshkosh & Mississippi River factories and the frames and cabinet work and some of the interior finish was bought here in Chicago. By Mississippi factories he refers to factories at Dubuque, Iowa, and Muscatine and Clinton, Iowa. The business in 1918 was almost nothing; this was during the war. In 1919 his business had grown to considerable extent; a great proportion was sold to outside cities; that is, outside of Chicago, in cities like Detroit, Cleveland, and Akron. Says he had trouble about the installation of his goods in 1921 by union carpenters; that they had a contract for twelve two-apartment buildings on Eastwood Ave., near Kedzie, and the sash for these buildings was purchased from Farley & Loetscher Manufacturing Company at Dubuque, Iowa; the doors from the R. McMillan Company at Oshkosh, Wisconsin. The sash was delivered to the buildings in the early part of April, and when the painters came to prime it they noticed there was no union label on the sash and they refused to go on with the job; the carpenters also refused to install it. The jobs, therefore, were stopped and we were obliged to make arrangements to get a stamp on the sash or the men would not put it in. Mr. Matson made arrangements to have it stamped and they had to pay a business agent for doing it. Matson is his partner and he is now in a sanitarium. He did not speak to the business agent himself about it and he did not see the agent at all during the time; he drew the checks and gave the money to Matson. He drew one check to currency for $298.00, and he got the cash and gave the cash to Mr. Matson in their office in the Conway Building. Matson then left the office. At this time the work was stopped. Matson returned in an hour or two and about one week after the work was resumed. He doesn't know if the material was stamped—he didn't see the material after it was taken away and brought back the second time. The material had been taken to one of their shipping warehouses on Grand Avenue and brought back on the job a few days after. The carpenters went to work on it a few days after
174 it was brought back. He had no correspondence with any agent about it and saw no letters written and spoke to no agent about it. In 1919, on another job, they paid one agent a small amount of money each month for four months. At that time they were furnishing material for jobs in Oak Park; the ma-

terial was furnished to a contractor named McConachie. He doesn't know the business agent that they were paying for four months, only knew him as Mac.

Motion by counsel for union defendants to strike out all witness has testified to about paying money to somebody that he doesn't know. Sustained as to that part pertaining to some unknown man.

He never saw Mac. except in his office.

When the union carpenters refused to work on our material our business tightened very much in the early part of 1919, so we decided that rather than be put out of business to go outside and get our business, and we accordingly went to Detroit, Cleveland, and Akron to obtain business in order to stay alive, and during the years 1919–1920, and even as late as 1921, we did fifty to seventy-five per cent of our business in those cities. The balance of our business was done in Cook County, Lake County, and suburbs. We couldn't do business in Chicago. We went to Waukegan, Aurora, and Illinois towns as far away as we could get. There was a difference in the price of windows, doors, and inside trim work that was purchased from Oshkosh, and the price of the same material manufactured in Chicago.

He remembers that in 1919 prices were going up; that is, the prices at outside mills and prices at Chicago mills.

The outside mills were much lower.

Motion to strike by counsel for defendants. Motion overruled. Exception.

He was in business in Chicago during 1919 and 1920, and he was familiar with the prices of the inside mills and the outside mills during those years. The prices of the inside mills were higher, as to inside trim work, doors, sash, and windows.

Objection by counsel for defendants. Objection overruled. Exception.

The inside mills were anywhere from fifteen to thirty per cent higher. He is familiar with the outside mills that engaged in the manufacture of this inside trim. He knows the R. MacMillan Company, located at Oshkosh, Wisconsin; the Radford & Wright
175 Company of Oshkosh, Wisconsin; Conway & Company, of Milwaukee, Wisconsin; Matthews Brothers Manufacturing Company, of Milwaukee, Wisconsin; Moore & Galloway Lumber Company, of Fond du Lac, Wisconsin; Curtis Company, of Clinton, Iowa; Farley & Loetscher Manufacturing Company of Dubuque, Iowa; the Roddie Lumber & Veneer Company, of Marshfield, Wisconsin; Roach & Musser Company, of Muscatine, Iowa; Roddie Lumber & Veneer Company. He has done business with most of the above concerns.

Cross-examination by Mr. Childs

During the year 1919 and 1920 he bought from the MacMillan Company. He believes he did some business with Farley & Loetscher.

He didn't buy any material from Conway & Company. He is not familiar with the prices charged by any of the companies other than the MacMillan Company and Farley & Loetscher during the years 1919 and 1920.

Says that a door two foot ten by seven and a five-panel yellow-pine door is not considered a stock door; that is, not in a solid yellow-pine door. A W. P. S. and R. K.—5 panel door is a white pine panel door, yellow pine top, and bottom rails—what we call lug rails—of white pine and panels of yellow pine is considered a standard design and size. Among the hardwood doors, a two foot six inch by six foot eight inch oak door would be considered stock in several designs. Oak and birch doors also come in that size. This description would fit the stock doors sold by these Wisconsin mills. A jamb seven-eight's inch thick and five and three-eight's wide for a three foot eight by seven foot door would be a correct description of stock material of that kind handled by a Wisconsin mill. He would not say that the Wisconsin mills would consider as stock frames a box frame 28x30–2 L. T. 1¾ thick; this would be stock for the sash but not for the frames. He never heard that the Oshkosh mills sold frames in this territory. Most of the frames used in Chicago are manufactured here, and certain concerns make a specialty of that work. Several of the main concerns are the Elsmere Manufacturing Company, James C. Milbourne & Sons, E. J. Bahe, and James Mil-

bourne, jr. The Wisconsin mills do not manufacture frames
176 in any quantity for this market. The frames that he buys he buys from specialists such as mentioned. The standard stock window, in his estimation, is a straight two-light window without lugs; they are mostly all 1⅜ inch. An inch and three-quarter window would not be considered as stock; that would be a special window. In the average the various items of stock above mentioned would be considered as typical descriptions of stock material. There are hundreds of different varieties of interior finish and many different descriptions. He says he was a scalper—that the business of a scalper is first to find out where there is a prospective customer for mill work and to get the figures—the specifications from the contractor, and then attempt to purchase that material covered by those specifications for that prospective customer. Before the mill work is purchased he first gets the order from the contractor. They have a running schedule from the manufacturers with whom they do business.

This is a contract they have them. He knows what the universal list is. It is a list got up by the Western Manufacturers' Association on sash doors and interior finish and blinds on which a certain discount can be applied. The list remains absolutely stationary and the prices are made by discounts from the list. The discounts vary with the market and demand—supply and demand. The original universal list has in it the specific names of the different articles of interior finish and prices following those names, and from those

prices the manufacturers give various discounts. That is the way he secures his prices from these various manufacturers nine times out of ten. He never had any trouble to have his manufacturers protect him on all contracts; when they entered into a contract to furnish material to contractors they would not have before that time got in touch with the manufacturers. After the material was order' from a manufacturer the next step was to wait for the job to be ready for measurements and deliver when the contractor called for the material, and in the meantime we get our material ready to be delivered on his demand. A great deal of the material in 1919 and 1920 was shipped from northern mills direct to a distributing central warehouse in Chicago, the Midland Warehouse and Transfer Company on 15th and Western Avenue. The material from the northern mills was not shipped direct from the
177 manufacturer to the job where it was to be installed. After the job was ready for this mill work it would be transferred from this warehouse to the job. Their profit on millwork which they got from these Wisconsin mills was figured at a certain percentage over and above their manufacturing cost; that is, the cost they were able to buy it at. They took into consideration in figuring that percentage the overhead and profit. In the years 1919 and 1920 the percentage figured for overhead averaged from fifteen to twenty per cent. They would add about twelve per cent to this for net profit. The total gross profit which they would add to the manufacturer's price would be from twenty-five to thirty per cent.

The price at which they sold their customer would be from twenty-five to thirty percent over the price that the manufacturer sold the material. The difference between his cost or the selling price of the Wisconsin mills and the selling price of the Chicago mills was between fifteen and thirty per cent. It would be impossible for him to state the relationship between the selling price in Chicago in 1919 and 1920 and the selling price outside of Chicago in other States, as to whether or not it was approximately the same. It is not a fact that he sold his mill work in Chicago in 1919 and 1920 for a less amount than he sold it outside of Chicago; their prices for outside would be on the same basis, adding the freight or hauling. He was in direct competition here in Chicago with some of the Chicago mills which have been referred to in this case. He has no record what price any of the Chicago mills were charging for doors in the year 1919. He can give no information as to why the Wisconsin prices were fifteen to thirty per cent less than the Chicago mill prices on doors or sash. He knows nothing about the prices the Chicago manufacturers were charging for sash. He can give a comparison on the prices charged by the Chicago manufacturers on jambs. He can't mention any specific item that he purchased from MacMillan during the fall of 1919 or during the year 1920. He has the price list of these Wisconsin mills, in which they specify their selling price

at that time, and he bought at those prices. The prices that MacMillan charged for jambs in May, June, and July, 1919, was, for birch jambs, 97 cents a set, including five cents extra for dado; that is a part they cut in. He has the MacMillan discount list
178 with him. He also has the universal list. Says he is now using a three foot by seven foot door base on the universal list of six dollars and fifty cents, and that makes the net price that MacMillan would charge him of 97 cents. That same set of jambs purchased in Chicago on the basis they are now using from the Star Moulding Company would cost him $1.36 plus five cents, or $1.41. He doesn't know if the Star Moulding Company was a member of Division G and doesn't know if they are mentioned as defendants in this case. He is not familiar with the prices charged by any other Chicago mill at that time for jambs such as mentioned here. Says they were doing most of their business that year with the Star Moulding Company. They did not buy any other moulding from any of the mills indicted in this case. He doesn't know what they were charging for jambs at that time. Says he was buying his moulding from the MacMillan Company at the rate of 97 cents per set of jambs. A set of jambs comprises two side pieces and the head; the piece at the top is the head. The percentage of profit on the jambs he bought at 97 cents might be from twenty-five to thirty per cent gross. He has no figures showing what any of the Chicago mills included in this case were charging for baseboard during 1919 or 1920 other than what he has just cited. Everybody sells on list and discount; at least the mills they buy from. The Star Moulding Company sell on list—there is a certain list on one hundred feet of base. He doesn't know if William Morris & Company sell on a list and discount, nor does he know about the Rinn Company. As far as 1919 or 1920 is concerned, he knows nothing about the Chicago mills did, except the Star Moulding Company, and he bases his statement on the prices the Chicago mills were charging and the prices the Wisconsin mills charged upon what has been referred to in his testimony.

Cross-examination by Mr. Cattell

When he stated that the Chicago mills were charging more for interior trim than the outside mills he did not include among the Chicago mills the Chicago & Riverdale Lumber Company, for the reason that he considered them doing their business in the same way he did; that is, buying their stuff from the outside mills,
179 such as MacMillan and Paine and Roche & Museer Company, and that they catered to the same trade he did.

He knows that the Riverdale Company bought material from these firms about ten years ago; that's when he was with the Gould Manufacturing Company.

Cross-examination by Mr. Thompson

He had the universal price list, which was supplied to all factories; the various factories agreed on a list, but some gave various discounts. The list price had to be fixed up in order to have some standard to work on. He hasn't one of the copies with him, but has in his office. Those in the list, as he understands it, are the factories of the Western Sash & Door Association. He doesn't think that the price list includes all those named to him by counsel for the Government; he doesn't think that Conway is *is* a member of the manufacturers' association. It was not a price-fixing association; it was a list association, so that everybody could make their own discount. The discounts varied, as every factory had the option to make its own discount; they quoted prices when you called on them for prices and they would quote discounts from the association list. The amount of the discount as a rule depended on the commodity. He couldn't tell how much the discount would be on a standard door. He has an estimate which MacMillan made him on May 12th, 1919; it is their original figuring slip, and was mailed to him as a guide. The discount on glazed sash on this estimate calls for sixty-two per cent from the universal list.

A discount on yellow-pine panel doors calls for seventy per cent from the universal list. This is on one particular order that he sent them.

Cross-examination by Mr. McKinley

He never did any business with the Carpenter Contractors' Association. He says that some of his work had been stopped; that he doesn't know if the carpenter contractors stopped it or not. He never did any business with members of the contractors' association and never did work with any of them. As far as he knows, he never sold goods to any of them. He doesn't remember ever selling
180 goods to Mr. Wehrwein or Mr. Doyle, Mr. Stresenreuter, or Mr. Scown. They had a small job for Mr. Frank Doherty several months ago. He never sold any material to Mr. McGimsie. He never had trouble with any of these gentlemen and nobody ever interfered with him. As far as he knows, if he did any business with them, the job went right along.

Cross-examination by Mr. Fink

He never visited the factory of the American Sash & Door Company at St. Louis, named in the indictment. He only knows them by reputation, and the same with the Conway Company at Milwaukee, and the Curtis Company at Clinton, Iowa. He has done some business with the Farley & Loetscher Manufacturing Company. He did some business with them in 1918, 1919, 1920, and 1921, but can't say specifically just what years. He did some business with the Gould Manufacturing Company, of Oshkosh, and the

MacMillan Company. Did no business with the Matthews Company, of Milwaukee, or the Morgan & Company, of Oshkosh.

He did no business with Moore & Galloway Lumber Company during the years above mentioned, but has since then. Has done business with the Redford & Wright Company, of Oshkosh, the Roche & Musser Company and the Roddis Lumber Company, of Marshfield, Wisconsin. As to those he did no business with, he knows only by hearsay that they are manufacturers of inside trim. The Western Sash & Door Association is an organization formed so that all the industry can have the same basis of prices to go on as regards the list. He wouldn't say that it is an organization of northern nonunion manufacturers. One of the purposes of the association is not to secure the various markets from the union manufacturers. He knows something about the purpose of the Western Sash & Door Association. He is not a member of that association. One of the purposes of the association is not to assist each other in securing trade. He wouldn't say that it is a mere social organization. He doesn't know where the members of the association hold their meetings; he doesn't know definitely how many members belong to the association, but thinks there are from twenty-five to thirty members. He doesn't know if it is a fact that all the members name in the indictment and that he has been questioned about and list as
181 outside concerns are members of that association; he knows that most of them are. The universal list that he speaks about is a list compiled by members of the association, and that each member, even though they concur in the compilation of the universal list, have a right to charge a different and separate discount.

Q. But in practice it is just about the same, isn't it?

A. No, sir.

Objection by counsel for Government. Objection sustained. Exception by counsel for defendants and each of them.

He hasn't in his possession any data by which he can give an accurate figure as to anything between any two members of the Western Sash & Door Association at any given time on any item as to the difference in the discount which they were charging or quoting.

The item before mentioned was called a set of jambs, and in May, June, and July, 1919, he could get it from the MacMillan Company for 97 cents; that in Chicago he would have to pay $1.41 for the same item. He doesn't know what he would have had to pay some other *other* member of the Western Sash & Door Association at that time for the same article—the MacMillan Company was the only people he was doing business with at that time and from whom he had quotations. He wouldn't say that it may have been at that time that all the other members of the Western Sash & Door Association were charging $1.41 for the same item—he might have bought it from some other mills up there for less than 97 cents. He has no idea at to the differential on that particular item and could not give it in percentage. He can't say if it would amount to more than

three or four per cent. It was quoted to him at 97 cents by the MacMillan Company as against $1.41 by the Chicago concerns. The 97-cent price quoted by the MacMillan people meant f. o. b. Chicago. When it came to Chicago it was put in a warehouse until they called for it to deliver it to the job. It was f. o. b. the warehouse and was put in the warehouse at 97 cents a set. The warehouse charge is very nominal; he paid a nominal monthly rental for a certain space. He doesn't know what the warehouse charge would be for this set of jambs. He is not able to tell the cost of the cartage of this set of jambs costing 97 cents from the warehouse to the job. The Chicago price was based on delivery on the job; he can't say as to the
182 ultimate cost delivered on the job. To the cost of warehouse charge and cartage charge he added the cost of doing business, and which was anywhere from twenty-five to thirty per cent gross. Insurance is included in the overhead. When he added his thirty per cent, plus cartage and warehouse expense and delivery at the job, he says that the ultimate consumer was still paying the Chicago mills a great deal more than the consumer paid him; that he was paying between fifteen and thirty per cent higher on this particular set of jambs.

He says he bought from Farley & Loetscher. Sheets shown witness, marked "Change in discounts," are not Farley & Loetscher's discount sheets to him. If he had the discount sheets, together with the universal list, he could figure what Farley & Loetscher were charging on the dates covered by the discount sheets for jambs.

Objection by counsel for Government. Objection sustained. Exception by counsel for defendants and each of them.

EDWARD J. PANOS, a witness called on behalf of the Government, being duly sworn, testified as follows:

His name is Edward J. Panos; he is a builder by occupation and has been engaged in that business for twelve years. He was engaged in that business during 1918, 1919, 1920, and 1921. He did no business in 1918—that was the war year, there wasn't much building going on. Did some building in 1919, some in 1920, and considerable in 1921. During the years 1919, 1920, and 1921 he bought his inside trim from mills located in Chicago. He didn't buy his inside trim from mills outside of Chicago because he was afraid the carpenters would not use the material and that the buildings would be tied up. He was afraid they would not use the material on account of article 3 and the restriction on nonunion millwork. He bought no material during that period of time outside of Chicago. Before that time he had purchased material outside of Chicago up to 1918—May, 1918. On his work he always bought the doors and windows outside, generally from the Morgan Sash & Door Company at Oshkosh, Wisconsin. The percentage of nonunion trim he bought out of town was very little, the biggest items being doors and win-
183 dows. On one occasion after 1918 he bought some stuff from Anderson & Lind; this was in 1921; he had bought from them

before 1918, but after 1918 he just bought this one time. When the union found out that the stuff was coming from them they told him that he was not governing himself according to their rules and that if he kept it up he would eventually have trouble. At the time he bought from them he was led to believe there was not as strong a restriction on article 3, and he thought he could take a chance on it. Previous to that he understood the lid was on tight. He thinks he made this purchase from Anderson & Lind in May or June, 1921. He believes at this there was a local investigation on here by the Dailey committee, and if he remembers correctly that commission was in operation during the winter of 1920 and spring of 1921. He is fairly familiar with the mills here in Chicago and has been buying considerable material from them. At one time he was in the sash & door business himself—he sold out during the fall of 1910. The best equipped and most complete mills here in Chicago, he thinks, are the Phillip Rinn, the Morris, and the Chicago Sash & Door Co., also the Union Interior and Nollau & Wolff. He has never been in those mills; has never talked to Mr. Rinn or Mr. Reynolds. The only mill he knows that put in machinery after article 3 when into effect was Heitmann's; they put in machinery to make sash. Before 1918 he had been buying from inside and outside mills; he got lower prices from the outside mills. The difference in price was approximately thirty-five per cent.

Objection by counsel for defendants. Objection overruled. Exception on behalf of all defendants.

When article 3 went into effect he examined into the prices of outside mills from time to time and there was still a difference in the prices from the outside mills and the inside mills.

Objection by counsel for defendants. Objection overruled. Exception on behalf of all defendants.

After article 3 went into effect the difference was much greater; one particular instance that he knows of in 1920, there was a difference of nearly one hundred per cent on some particular items of mill work for a certain bunch of buildings—that was for doors. In 1921 there was a difference of more than one hundred per cent on an item for sash for a bunch of buildings. He remembers these particular instances.

184 Cross-examination by Mr. Fink

He first made an examination after April 20th, 1918, into the prices of outside mills and compared them with local mills, in the fall of 1919. He made no examination until then. From the fall of 1919 up to September 21, 1921, the time the indictment was returned, he made no examination of prices. Altogether he made only two examinations into prices, one was in the fall of 1919 and the second examination as to comparative prices was in May or June, 1921. In making this examination as to prices he compared the prices of foreign mills with the prices of local mills on particular items. The particular item in the fall of 1919 was doors; that

was the only one. In the spring of 1921 the particular items were sash and doors. In making his comparison in the fall of 1919 he didn't consult the price list of outside mills; he talked to the Morgan Sash & Door Company, an out-of-town concern—he asked for prices—what this would cost, etc. The Morgan Sash & Door Company maintained a branch warehouse here and he went in and inquired the prices of a certain kind of door; it was a two panel pine door, a 2'6 x 6'8, and inch and three-eighths. Some of the trim he inquired about was a little smaller and some a little larger, but in the same class. He talked with Mr. Salb at the Morgan warehouse, no one else was present. He asked for prices on these particular doors and Salb gave him a discount which approximated the price of the door around $3.50 each. He doesn't remember in detail just what was said. The discount was from the regular universal sash and door list; he thinks it amounted to about 65% and in applying the discount to the universal list price it meant that each particular door averaged around $3.50. In comparing that price with the price of the local mills, he consulted one local mill—the Heitmann Lumber Company. He consulted their estimator, a man named Mr. Clotte, at his office at 59th and Ashland Ave. He remembers nobody else being present. He figured with them on a group of buildings for mill work and then asked for a separate price on the doors. They said, "We do not make separate prices on doors; we take the business all in one. The next day he came around again and said that if he should give them the job and wanted them to leave out some of the doors, how much would
185 they allow him for it, and in that way he found out what they were charging for the doors. They made an allowance for leaving out some of the doors. He left out some of the doors and they said they would allow him for the doors left out an average of $7.00 each. He left out a couple of doors on a building. In May or June, 1921, he made a comparison of the prices on sash and doors and he consulted the price of one outside store, the Morgan Company. He thinks he asked for the prices of sash and doors at the same time and from the same party at Morgan's warehouse. No one else was present that he remembers. He asked for a price and it was given him, it was seventy off on the windows, open sash, which would be thirty per cent net on the list, that is, an average sash would list about $2.00, and seventy off that would make the sash cost sixty cents, that is, if the list was $2.00. He thinks the price on the doors was sixty-eight off the list—he thinks they were the same sized door he inquired for before, but a different door—it was a western pine style and rail and veneered yellow pine panel, with the same run of sizes, that is about 2'6 x 6'8, some smaller and some larger, and applying the 60% discount to the universal price list, if a door averaged $7.00 and the discount was 60 off, the door would run about $2.80 net. In making this comparison in the spring of 1921, as to sash and doors, he consulted just two local mills, the

Anderson & Lind and a union mill. James Wilburn. When he consulted Anderson & Lind he talked to Mr. Anderson, and no one else. The conversation took place in Anderson's office—there were people in the office, but no one present at the desk when he discussed the matter with him. He asked for a price on sash and Mr. Anderson gave him a price between 65 and 70 off—a $2.00 list on sash on a basis of 70 off would run 60 cents. That was approximately the same price he got from Morgan—Anderson & Lind was a little higher but not much. On the doors Anderson gave him a price within ten per cent of Morgan's price—Anderson was a little higher. Anderson's price would be about $3.00 on the doors. He also consulted James Wilburn and had a conversation with him in Wilburn's office. No one else was present. He asked for prices and some things and Wilburn gave them to him. Sash was five off the universal list, which made the same $2.00 sash $1.90. He gave him
an approximate good price on the doors which averaged them
186 from about $3.75 to about $4.25. Wilburn did not tell him
he would have to manufacture these doors himself if he delivered them to him.

Cross-examination by Mr. Streeter

The price referred to on the list includes what is known as regular standard stock. The standard of comparison would not be as clear on special designed millwork, sash and doors; the basis of per cent from the list would not be as clear. The only way of obtaining that would be by getting a bid from the outside mills and a bid from the Chicago mills, unless they had provided for special contract conditions on the list. The list would furnish no basis of comparison in all cases where it is special detailed work. Nollau & Wolff Manufacturing Company was a specialty mill, they possibly would buy this standard stock and then sell it. He knows of no specific cases of their buying standard stock from any one. He never bought any from them and knows no one else who did. He says that Nollau & Wolff had one of those types of mills that was unfavorable before article 3 went into effect.

Motion by counsel to strike answer. Motion overruled. Exception.

Says that article 3 worked to the advantage of Nollau & Wolff because they had a mill fully equipped to make everything.

Cross-examination by Mr. Cattell

He knows Mr. Hammer, of the Chicago & Riverdale Lumber Company, who is in charge of the sales. He was familiar with the business they did and they bought most of their stuff from the outside mills. He doesn't know if their mill was devoted to the making of specialties—they did very little business in the city of Chicago. They bought from the same mills during this period from which he bought, that is the outsiders, Oshkosh and Neenah.

Cross-examination by Mr. Fink

He knows of the Union Interior Finish Company, also
187 knows of the Reynold's mill. The latter would be a mill considered in the same class as Nollau & Wolff, except that it is smaller.

Cross-examination by Mr. McKinley

He was a members of the Carpenter Contractors' Association in 1918, 1919, and 1920. He is not now a member of the Associated Builders and takes no active part in the meetings, and never did. He attended a few of their meetings, was a member six years and possibly attended five meetings in the six years. Contractors were absolutely against this agreement, also the Carpenter Contractors' Association were against it and they fought it every three years when it came up when the carpenters' agreement expired. It came up every three years to get article 3 in, and they fought it almost to a man.

Cross-examination by Mr. Thompson

When he spoke about being afraid that the carpenters would not use his material and the possibility of having trouble, the only thing be feared as far as the carpenters were concerned, was that union carpenters would not install nonunion material and that his buildings would stand. That had to do purely with the question as to whether or not the material had a union label on it.

L. H. Dodd, called as a witness on behalf of the Government, being duly sworn, testified as follows:

His name is L. H. Dodd; he is connected with the Sterling Lumber and Supply Company and has been with that organization for sixteen years. The company is engaged in the lumber and millwork business. His company belonged to Division G of the Millmen's Association. He is general manager and vice president of that company and was in 1918, 1919, and 1920. He attended some of the meetings of Division G of the Millmen's Association and thinks he was at the meetings in the spring of 1918. He remembers that article 3 was discussed several times at these meetings—it was under
general discussion at some of these meetings. Some of the
188 members thought it would be a nice thing and some were opposed to it.

Q. What reasons were assigned for it being a good thing?

Objection by counsel for defendants. Objection overruled. Exception on behalf of defendants and each of them.

Some of the mills manufacture more than others do and they thought they could produce the goods in their own factory, so naturally they were in favor of article 3 being in the agreement. Several of them expressed themselves that way, he doesn't remember the

names. These discussions were had in the open meetings. He led the discussion against it.

He remembers that Mr. Anderson, of Anderson & Lind, was opposed to it. He thinks Mr. Frank Heitmann was also opposed to it. Some of the representatives of the so-called larger mills were in favor of it, such as the Union Interior, represented by Mr. Reynolds; Morris Company, represented by Harry Morris, and several others; he couldn't just say definitely—there was a general discussion, some were in favor and some were opposed to it. He is not now a member of the Millmen's Association. He believes the question of discount between the contractors came up a little later, after the other agreement had been signed by the union. He felt that the millmen in these discussions were more or less victims of circumstances at the time. He was absolutely opposed to the discount and refused to be a party to it. He couldn't say if he was present when the vote was taken, he walked out of one or two meetings. Doesn't know the reason given by those who were in favor of the discount as to why it should be allowed. He remembers very vaguely a meeting where Mr. Doyle and Mr. Green and others representing the contractors were present. He doesn't remember the wording of the discussion which took place with any positiveness—he recalls Mr. Doyle making a speech but doesn't remember the substance of it. He doesn't remember Mr. Green's speech at all. He was not on the labor committee or the trade relations committee and had nothing to do with the negotiations carried on by those committees at that time.

189 Cross-examination by Mr. Fink

He doesn't remember when the contractors signed their agreement with the carpenters in 1918; he remembers there was an agreement signed. Doesn't know how many meetings had been held of Division G during the year 1918 prior to this time; his best recollection is that there were several meetings. He believes the secretary kept minutes of those meetings; he has not seen the minutes. If the minutes showed that during the year 1918 there had been only one meeting of Division G, prior to the time that the contractors signed their new agreement with the labor unions, he would still say that were more meetings than one, that is his recollection and that is vague. Agreed between counsel that the millmen's agreement was signed on April 18th and the carpenter contractors was signed on April 10th. Says there were several meetings before April 10th; he doesn't recall how many he attended. He remembers nothing that happened at any meeting of Division G prior to April 10th, 1918. He couldn't say if the meeting of April 19th was the first meeting at which article 3 was discussed. He remembers, however, that at some meeting, or more than one meeting, there was some discussion about article 3 in the year 1918—he is not positive as to the exact date. Says that some of the members present favored the change in

article 3. He can recall the names of some who expressed themselves in that way, as he stated before, the larger so-called mills, manufacturers, and their representatives. He remembers very distinctly that Mr. Reynolds, Mr. Morris, and Mr. George Rinn discussed that proposition and were in favor of it, and that he took the floor and opposed it. He couldn't name the others—there was a general discussion. He has no recollection of any others outside of those three as speaking in favor of the change in article 3; that is, he can't give the names of anybody else speaking in favor of article 3. He recalls but one occasion, one very exciting session, when he heard Mr. Morris speak in favor of article 3; also of Mr. Rinn and Mr. Reynolds. It was at the same meeting, and that is the only meeting that he has a distinct recollection of these men speaking in favor of a change in article 3. At the time Mr. Morris made his statement there were about twenty four or twenty five representatives of the mills in Chicago
190 present; he remembers Mr. Beck being there; also Mr. Gamble; believes Mr. Traeger was there; Mr. Stewart, of the A. P. Stewart Lumber Company; Frank Heitman; Mr. Dierssen; also Mr. Irvine and Mr. Haring; that is all as near as he can recollect who were present at that meeting. The meeting was in the association room, 4th floor, Lumber Exchange Building; thinks it was around 2 o'clock and lasted until 5.30. He doesn't recall what else happened at this meeting besides the statements made by Morris, Reynolds, and Rinn. He doesn't recall what Morris, Rinn, or Reynolds said. Says that he felt that the millmen had been victims of conditions with reference to the change in article 3. He recalls that at one meeting the question of a proposed trade discount was discussed—doesn't remember at which meeting this was. He has no recollection of it being discussed but once. The meeting was held at the same place and the general membership of the association was present. He doesn't remember who were present or what was said by any person there. He said at that meeting that he would not be a party to any trade discount; he may have said something else but he doesn't recall. He did not say that he never heard of a trade discount being mentioned in connection with article 3 at any of these meetings. He did not say in his direct examination that he had no recollection of the trade discount being mentioned or discussed at any of these meetings in connection with article 3.

Motion by counsel for union defendants to strike out testimony of this witness. Motion overruled.

Cross-examination by Mr. McKinley

He thinks he resigned from the lumbermen's association in 1921. He doesn't know Mr. Frank E. Doherty and doesn't remember ever seeing him at any meeting of the millmen's association. He doesn't know Mr. William J. Scown, and couldn't say if he ever saw him at a meeting of the millmen's association. He would not know him if he saw him. *De* doesn't know Mr. Wehrwein, and he wouldn't know him if he saw him, and to his knowledge he never saw him. Identifies

Mr. Wehrwein as having seen him before, but he doesn't remember if he ever saw him at a millmen's meeting. He believes he has
191 met Mr. McGimsie. He has met Mr. Doyle, but wouldn't know him now if he saw him. He doesn't know Mr. Frank Stressenreuter. He has seen him but doesn't recall if he ever saw him at a millmen's meeting.

Cross-examination by Mr. Childs

His recollection is that Mr. Peter Beck at the meeting referred to expressed himself as opposed to article 3, also Mr. Dekker. He doesn't remember if Mr. Dick expressed himself as opposed to article 3. He doesn't know if Mr. Haring was not a member of Division G during the spring of 1918 and he couldn't say that what the minutes would say in that regard would be correct. He doesn't know if Mr. Gamble, of the Riverdale Company, was in California during the winter and spring of 1918.

Redirect examination by Mr. Fowler

He doesn't remember if article 3 and the trade discount were discussed at the same meeting; he stated before he thought the trade discount was discussed at a later meeting than the meeting at which article 3 was discussed.

THOMAS B. HARNED, called as a witness on behalf of the Government, being duly sworn, testified as follows:

His name is Thomas B. Harned; he is with the Burton Electric Company at the present time. At present he is living in Chicago, but he is in business in Milwaukee. Before working for the present concern he was with the Liquid Carbonic Company for five years, and also had been in the advertising business. He was with the Liquid Carbonic Company from 1916 to September 30, 1921. The company is located at 31st and Kedzie Avenue, Chicago; it manufactures carbonic gas, soda fountains, backbars, store fixtures, and all sort of appurtenances for soda fountains, also bottler's machinery. They manufacture and install soda fountains. He remembers distinctly the installation of a soda fountain for the Owl Drug
192 Company. Says they had a contract with the Owl Drug Company to furnish them with a 35-foot fountain and backbar for their store at Madison and Clark Streets. The backbar consisted of a refrigerator base, made of woodwork with a fancy top made out of woodwork, glass, and marble trim. Woodwork would be classified as cabinet work or it might be classified as trim. The trim or manufactured product they made at 31st and Kedzie Ave., at their soda fountain plant. They had several different shops in the plant at that time in 1920; there was only one union shop and that was the tin shop. All of material for the Owl Drug Company was manufactured in an open shop with the exception of the cooler box cover and the tin which goes on the interior of the soda fountain—the tin was manufactured in the tin shop which was union. Some-

time in August the soda fountain and backbar was shipped to the Owl Drug Company store at Madison and Clark Streets, and about one day after it was shipped there, Mr. J. B. Oldham, manager of the Chicago branch (sales branch) came to see me. He (witness) went down town and met the representative of the carpenters' union, a man named William G. Schardt, at the Sherman Hotel; this was in the afternoon. He had a conversation there with Schardt. Schardt said: "Mr. Harned, that backbar has been made with nonunion labor." He (witness) said, "Yes." Schardt said, "That will have to be made by union labor or I will pull a strike on this building, or you can pay a fine of $1,500.00 to my union." He told Schardt that the fine was high and that he would go back and talk with his superiors, the president of the company and Mr. Alfred Runke and Mr. Walter McIntosh, and he would meet him the next morning, about ten o'clock, at the same place. He met Schardt the next morning at the Sherman House and paid him $1,000.00 in $100.00 bills. This money was paid in a telephone booth at the north end of the Sherman Hotel. He believes that he and Schardt arranged as to the amount of the fine the day before, but is not certain. He brought more than $1,000.00 along with him, but only gave Schardt $1,000.00. The day before he said to Schardt, "I can give you my check," but Schardt said he didn't want his check, that he trusted him but would rather have the money. He doesn't remember if Schardt went into the telephone booth ahead of him, but thinks he
193 did. After the money was paid to Schardt the material was shipped down and installed; he believes nonunion men installed it and there was no further trouble about it. He doesn't know anything about the outside carpenters working there; he had nothing to do with the job except in regard to the soda fountain. He was general sales manager of the company he worked for. Schardt told him that if the money wasn't paid he would strike the building.

Objection by counsel for defendants and motion to strike out all the testimony of this witness. Mo-' overruled.

Exception on behalf of all defendants and each of them.

The building was not under construction, but a new store was being fitted up by the Owl Drug Company. Other manufacturers were putting in fixtures and if this arrangement hadn't been carried out it would have meant a lawsuit against us for damages by the Owl Drug Company for loss of time in getting their business started. They had a specified time in which to complete this job.

Motion by counsel for millmen renewed to strike testimony of witness from record. Motion overruled.

Motion by counsel for union defendants to strike. Motion overruled.

Exception, on behalf of defendants and each of them.

Cross-examination by Mr. Thompson

He says that Schardt threatened to call a strike; that he only met Schardt on two occasions; he was introduced to him by the

architect of the Owl Drug Company through their city salesman, Mr. Chrislen, who sold the job to the Owl Drug Company. It was not his understanding that the union could fine him because he conducted his affairs with nonunion men; that was simply Schardt's expression. He didn't take the matter up with any of the other officials of the carpenters' union, and he didn't look into their constitution or by-laws to determine whether that was legitimate or not. He thought at the time he was just being held up and he did not believe it was part of the union policy; he thought it
194 was just a private matter between he and Schardt as individuals. He discussed the matter at the plant and it was decided that it would be cheaper to pay the money than engage in a law suit with the Owl Drug Company, and he went ahead and paid the money and installed the material with his own men who were nonunion.

Cross-examination by Mr. McKinley

Thinks this occurred in August, 1920; he doesn't know the names of any of the other contractors on that store and doesn't know if the building is the Strauss Building, but that it is on the northwest corner of Madison and Clark Streets. He doesn't believe that his firm was a member of any contractors' association at that time. He didn't discuss the matter with any contractors' association; he never knew Schardt before. They had what they call "erectors" to put up soda fountains; some of them belonged to the union and some didn't. The work was not let to any contractor and no contractor interfered with them. He doesn't know of his own knowledge if the carpenters' union filed charges against Schardt and put him on trial in this matter. He knows that Schardt was put on trial by the State of Illinois of a charge of this very same matter; that he testified there and that the verdict was that Schardt was not guilty.

ROBERT FINNEGAN, called as a witness on behalf of the Government, being duly sworn, testified as follows:

His name is Robert Finnegan; he lives in Chicago and is sales manager in this district for the Payne Lumber Company, of Oshkosh, Wisconsin; he has been with the Payne Lumber for fourteen years, in two periods—was away two years in between. Thinks the years he was not with them was in 1913 and 1914. Up to 1919 he has been engaged as a salesman and since then he has been in charge of the sales in this district. During the years 1915, 1916, and 1917 he sold Payne's material to practically all the millwork dealers in Chicago and manufacturers that bought outside.
He doesn't know the class of buyers of his material in Chicago
195 in 1918 and part of 1919, as the first month of 1918 he was in Washington, D. C., and the balance of 1918 to September 1st, 1919, he was in Detroit. From the first of September, 1919, to the first of September, 1921, practically all the buyers of Payne's material in Chicago were jobbers and mail-order houses, dealers that were doing business out of Chicago proper.

Witness identifies a tabulation which Government asks to have marked for identification, whereupon the document referred to was marked "Government's Exhibit 66 for identification."

States he saw the tabulation before in his office, that it was prepared by his stenographer under his direction. It was made from the sales records of the Payne Lumber Company from 1915 to 1921, inclusive; that is, from the sales records and invoices they have in their Chicago office. After the tabulation was made up by his stenographer he rechecked it. The sales records are taken from the invoices.

Government offers in evidence its Exhibit 66.

Objection by counsel for material men and union defendants. Objection overruled.

Exception on behalf of defendants and each of them.

Witness refers to memorandum and states that it is a list of dealers in Chicago that they sold during the period mentioned; that is, from 1915 to 1921, inclusive; it shows the sales to individuals for each year in dollars and cents. States that the total business done by the Payne Lumber Company during the years 1915, 1916, and 1917 amounted to $538,729.83. The total amount of business done during the period from April 1st, 1918, to September 1st, 1921, in Chicago, isn't totaled. The total amount of business done by the Payne Lumber Company with the concerns he described as millwork dealers in Chicago during the period from April 1st, 1918, to September 1st, 1921, amounted to $21,194.96. During the period from April 1st, 1918, to September 1st, 1921, the amount of business done with mail-order and jobbing houses and dealers doing business out of Chicago amounted to $388,527.43. The amount of material they sold to the Chicago & Riverdale Lumber Company during that period was $214,520.16. He has had several conversations
196 with the defendants, Decker & Gamble, of the Chicago & Riverdale Company, with reference to their method of doing business; they stated that at least 95% of their business was done outside the city of Chicago. During the period of this indictment they sold to the General Millwork Company material amounting to $12,461.36, and as far as he knows their business is all outside the city of Chicago. They sold the Gauger Company $6,868.16 worth of material; this is jobbing house and sells millwork all over the United States; they reship it out of Chicago. The next concern is the Harris Brothers Company; they are a so-called mail-order house—they possibly sell to individuals who come in and want to buy and also sell all over the United States.

Says that about six per cent of the material sold for the period from April 1, 1918, to September 1, 1921, was installed in buildings in the city of Chicago; he figures that about $21,000 of the material was installed in Chicago, and as far as he knows the balance was reshipped out of Chicago. Says that the Payne Lumber Company makes more hardwood doors than any other concern in the

country, or throughout the world; but on other material there are manufacturers who make as much or more than they do.

Cross-examination by Mr. Fink

He can't say from the statement was their gross volume of business was in Chicago in 1915—nor for 1916 or any of those years. He says that through all those years it ran in the neighborhood of half a million dollars. In 1918 the Government had 90 per cent of their plant and they were practically not in the millwork business. After the year 1919 he would say that their gross business in Chicago amounted to something over $600,000.00; for the year 1920 it ran close to $900,000.00; for 1921 about $600,000.00 and for 1922 between six and seven hundred thousand dollars.

Cross-examination by Mr. Cattell

His firm has done business, to his knowledge, with the Chicago & Riverdale Lumber since 1915; in 1915, to the best of his knowledge, they did a little over $3,000 worth of business with them; in 1916, about $6,600.00; in 1917, a little over $16,000; in 1918,
197 $17,000; in 1919, a little over $38,000; in 1920, $109,834.29; 1921, $83,000; and in 1922, $152,000. The Chicago & Riverdale Company was their largest customer in the millwork business in the Mississippi Valley during a portion of those years. Says that more than 99% of the material sold the Riverdale Company was shipped to its Chicago warehouse located out on 135th Street. They never sold to the contractors while he has been in Chicago. To his knowledge, no material that they sold to the Chicago & Riverdale Lumber Company was interfered with in installation in Chicago. In June, 1918, prices started to go higher and increased about 100% by 1919. In the first part of 1920 they were not trying to extend their business in Chicago; in the latter part of 1920 they were. For the first four months of 1920 they couldn't supply all the material that the Chicago & Riverdale Lumber Company asked for, because their plant couldn't take care of any more business. Says that the Chicago & Riverdale Lumber Company bought the stock that was delivered to them in 1920 along about October, 1919, and they shipped them doors in 1920 at 26 points under the market. He believes that during the years he was interrogated about that more than half of the goods they shipped into Chicago were shipped to the Chicago & Riverdale Lumber Company.

Cross-examination by Mr. Childs

He doesn't believe that the Bleck Lumber Company has ever been much of a customer of theirs; they have sold them but not to any great extent. He has sold both the Vincent Dlouhy Company and

the W. F. Bleck Company; doesn't recall selling the Heitman Lumber Company, but they may have. To his knowledge, they never sold the Melrose Mill Company during 1918 or 1919; he has no recollection of having made any sales to the Melrose Mill Company since 1917. Having told me he would have continued buying from us, but that he was afraid to buy outside. Sold to Phillip Rinn Company prior to 1918. These various Chicago mill manufacturing companies were really his dealers; they sold to no contractors but sold to millwork dealers, who in turn sold to the contractors. No since he has been in Chicago did the Paine Lumber Company sel
to contractors prior to 1918; I wouldn't say it was against
198 the business policy of the company, but simply a case that if
they sold to contractors they couldn't sell to dealers and they preferred to sell to dealers, and prior to 1918 they practically limited their business in Chicago to dealers.

They figured their prices to dealers on the discount basis; they used the universal list up until 1920; he thinks that after 1920 a new hardwood door list was adopted which was higher than the universal list. On all pine doors and all sash the universal list was used and is still used, and the trade discount is given from that list. The Rittenhouse & Embree Company is a big lumber millwork company in Chicago; their millwork plant is located on Belmont Avenue; they have a mill now, which he thinks they put in in 1918. The Sterling Lumber & Supply Company is the concern with which Mr. Dodd is connected; they were never a big buyer from the Paine Lumber Company.

Recross-examination by Mr. Cattell

During all the time they sold the Chicago & Riverdale Lumber Company the Riverdale Company had their own mill right adjoining the warehouse he spoke of; they manufactured odds and ends.

Recross-examination by Mr. Childs

He can't furnish the prices they were charging for stock millwork in Chicago during the various years covered by the exhibit; he only kept his records a year back as far as prices are concerned; their prices began to advance along about June, 1919, and continued to advance until about the first of December, 1919, when they had advanced more than a hundred per cent. He doesn't think that some of their commodities advanced as high as two hundred per cent, but he wouldn't say for sure. Says that their doors didn't advance as much as three times what they were selling for in 1917 and 1918; that, if he remembers correctly, they were selling for a discount off the universal list of 75 off, probably 72 off when the advance started, and they went to about the list.

During this period of time they reached a situation where they would take the base price of the universal list price and add
199 a plus to that price, on oak doors only. Early in 1918 the discount on oak doors was about 62 off. The price for a 2x8–6x8 standard oak door was $7.85 at that time, and the selling price was 62 off. In 1920 the net price to the purchaser was the list price, but they took no business; they were absolutely out of the market. He doesn't think they sold a single order where they got a list, or plus list price on oak doors; they were out of the market because they had more business on hand than they could manufacture. They were not looking for business in the last four months of 1919 and the first four months of 1920; they had from six to eight months orders for doors on their books.

Cross-examination by Mr. McKinley

Their method of dealing was not selling to the contractor, and since he has been connected with the Paine Lumber Company in Chicago they never sold to the contractor. They had no business dealing whatsoever with the Carpenter Contractors' Association. They never sold any material to Messrs. Doyle, Scown, Doherty, Stressenreuter, or McGimsie.

Redirect examination by Mr. Howe

In regard to the Melrose Mill Company purchasing their goods, he talked with Mr. Haring, of that company, when he returned to Chicago, and he said that he would like to do business with the Paine Lumber Company, but that the unions had tied him up, and they told him that if they found a single case where he was buying outside millwork again they would shut him out for good. This conversation was in the fore part of 1919 at Mr. Haring's office.

Motion by counsel for defendants to strike answer. Motion overruled.

Exception on behalf of defendants and each of them.

His statement about the gross business of the Paine Lumber Company for the years 1916 to 1921, inclusive, covered articles they called millwork, house millwork. They made large quantities of wooden parts for electrical washing machines, wooden parts for carpet sweepers, wooden parts for card tables, and commodities
200 of that character. When they were shut out of the market in Chicago they went outside in other articles that took up their capacity. Their Chicago business covers the entire State of Illinois, the entire State of Indiana, southern Wisconsin, western Michigan, all of Kentucky, and a little corner in southwestern Ohio, and Davenport, Iowa. And the figures he gave as being their Chicago business covered all that material in that territory. The tabulation he identified covers their millwork in the city of Chicago only.

Recross-examination by Mr. Thompson

When Mr. Haring told him that the union has tied him up, he didn't discuss any more than to say that he was afraid to buy outside material on account of the union saying that if he bought any more they would tie him up; they didn't discuss why. He judges it to be because of the policy of the union, as the reason they would not install nonunion trim.

Recross-examination by Mr. Childs

As to whether or not they got as much for the material they sold outside of Chicago in 1919 and 1920 as for the material they sold in Chicago during those years, it would depend on how the purchaser bought it. If he bought ahead, he bought at a much lower price than if he bought for delivery. Their discounts are substantially the same all over the United States.

FRED A. JOHNSON, called as a witness on behalf of the Government, being duly sworn, testified as follows:

His name is Fred A. Johnson; he is a city salesman for the Morgan Sash & Door Company, located at 2287 Blue Island Avenue, Chicago, Illinois, where they manufacture. They also have a place at Oshkosh, Wisconsin. He has been with this company for eight years and during that time he has been selling sash and trim in Chicago.

201 Identifies a sheet marked for identification, "Government's Exhibit 67," and says that he has seen it before; that he compiled that sheet in the office of the Morgan Sash & Door Company in Chicago; that he compiled the figures on that sheet. Witness identifies tabulation marked "Government's Exhibit 68." Says he has seen the sheets before and that he prepared the sheets personally; that the sheets were prepared from the records of shipments, in dollars and cents, to the Chicago trade. Says that Government's Exhibit 67 for identification was prepared from Government's Exhibit 68; that Government's Exhibit 67 contains the totals from 1910 to August 1st, 1921, inclusive. Government offers in evidence Exhibits 67 and 68.

Objection by counsel for defendants. Objection overruled.

Exception on behalf of defendants and each of them.

Referring to Government's Exhibit 67, that the amount of business in dollars and cents done by the Morgan Sash & Door Company in the city of Chicago in the year 1916 was $360,488.92, in 1917 was $149,983.46, and in 1918, $245,766.03. With reference to the last figure he has a notation in his memoranda as to amounts on particular items that were not used in construction in the city of Chicago; that there was $150,811.45 worth of material sold to a Chicago contractor, but used at the Great Lakes Navel Training Station at Waukegan, Illinois. Another item was $25,079.98, which was a holdover on the Sisson Hotel, a contract that was entered into in 1917; that is, material purchased in 1917 and used in 1918.

After deducting these last two amounts, their total business in the city of Chicago in round figures would be about $70,000.00 in 1918. Their business in 1919 was $61,234.93; in 1920, $50,582.01; and in the year 1921, up to and including August 1st, $90,612.40. In the years 1915, 1916, and 1917 his company sold to both millmen and Chicago contractors. In the years 1918, 1919, 1920, and part of 1921 the material sold was mostly to millmen and cash sales at the factory. A cash sale would be where anyone would come to the factory and buy a commodity they would have in stock for cash. Prior to 1918 he was familiar with the various mills around Chicago and they sold to most of them here. He didn't sell to those same mills after 1918; he quit calling on the mill trade in 1918. Occasionally during 1918, 1919, and 1920 he attempted to sell to members of the mill-
202 men's association, but did not sell them. He didn't call on Barr & Collins; he called on Bartelman. Bartelman said they couldn't buy from him on account of his being a nonunion mill. Didn't call on the Beck Coal & Lumber Company, nor the California Manufacturing Company, the Chicago Sash, Door & Blind Manufacturing Company, the Commercial Sash & Door Company, the A. Dietsch Company. He did call on the Vincent Dlouhy Sash & Door Company and spoke to Mr. Theodore Kartheiser; he believes it was in the fall of 1920. Mr. Kartheiser said they (the Morgan Sash & Door Company) was a nonunion mill and they couldn't do business with us. He didn't try to sell William Morris & Sons Company, the Nollau & Wolff Manufacturing Company, nor C. E. Peterson Company. He tried to sell the Pilsen Sash & Door Company and spoke to Mr. James Smiedel, who also said that they (the Morgan Company) was a nonunion mill. He tried to sell the VonPlaten & Dick Company and spoke to Mr. Traeger, who also said that the Morgan Company was a nonunion mill.

In the years 1917, 1918, and 1919 he personally belonged to the Builders and Traders Exchange and in the latter part of 1919 or early in 1920 he joined the Associated Builders. To his knowledge he was never a member of the Carpenter Contractors' Association.

Cross-examination by Mr. Childs

He doesn't know what associations the Morgan Sash & Door Company belonged to. He belonged to no association that had to do with the millwork business. He knows of no association in Chicago that had to do with the millwork business, outside of Division G, but has heard of such association, but doesn't know the name of it. Says that some years ago there was an association he believes that was known as the Western Sash & Door Association—he doesn't know when it dissolved and never attended any of its meetings. Doesn't know if the Morgan Sash & Door Company belonged to it. He knows nothing about their association matters. In 1918 he was not in charge of their business; he was just a city salesman. In

1919 and 1920 he was also a salesman. He knew all about the records from which the tabulations were made; he did not keep the
203 records and they were not kept under his direct supervision. Some one else told him they were correct.

Motion by counsel to strike out testimony pertaining to the tabulations.

He knows the tabulations are correct and took them from the records in his office; he takes for granted the correctness of the original records. The original records are kept by two or three clerks. His status as regards the record is that it affected his business as city salesman; he had to have personal knowledge of these various transactions for comparison, and he knows by reason of his intimate personal connection that they are true and correct. At times when he is not out selling he does some clerical work in the office and is in touch with these books and the entries are a record of his sales, so that he has personal knowledge of their correctness. He made none of the entries himself. When he makes a sale he makes up the original order from which the record is made.

Motion overruled. Exception on behalf of defendants and each of them.

He is familiar with the prices for millwork that the Morgan Sash and Door Company were charging in 1918, 1919, and 1920. He couldn't tell what they were charging for a 2–6 by 6–8 door, oak, in the summer of 1918; he has no records with him from which he could give the information.

Identifies a sheet dated July 1st, 1918, on the letterhead of the Morgan Sash & Door Company, as a price list of that company. Said document marked "Millmen's Exhibit 1 for identification."

Attention of witness called to another list dated August 1st, 1918, and he says they are the prices of the Morgan Sash & Door Company on that date; also with reference to price list date April 1st, 1919, the same as to one dated June 2, 1919; also July 15, 1919; August 16, 1919; November 1, 1919; August 19, 1920; and December, 1920. These sheets give the various items of millwork and the percentage after the items, which is a discount from the universal list. Says they have their own price lists as well as the universal list. Some of the discounts are on the universal list and others are on their own list. He can identify those on his own list from those on the universal list. He could tell from the price lists what they were selling doors for in 1919 and 1920.

204 Cross-examination by Mr. Cattell

During the period from 1917 to 1920 his firm sold material to the Chicago & Riverdale Lumber Company. No member of the Chicago & Riverdale Lumber Company ever said to him that they would not buy his goods because the Morgan Company was a nonunion mill. Prior to his association with the Morgan people he worked for the Paine Lumber Company, and while he worked for the Paine

Lumber Company they sold to the Chicago and Riverdale Lumber Company. He was familiar with the character of the trade of the Chicago & Riverdale Lumber Company and knew from whom they bought: that they bought from outside mills. Also from nonunion mills like his.

Recross-examination by Mr. Childs

Says he personally had no business with the Beck Company; his firm may have had; he knows nothing about but, but knows that the firm has had dealings with the Beck Company. In the summer of 1919 the business of the Morgan Sash & Door Company was picking up; they filled all their orders in the fall of 1919. The business started to increase in volume in 1920. His attention called to a letter written to the Beck Coal Company on August 27th, 1919, with reference to an item carried in stock, but which was exhausted at that time. Says they didn't have that material in stock at the time, and that it was exhausted because of the fact that it had been sold to other customers. Along in November, 1919, and December, 1919, they were sold to capacity, but never oversold. They didn't take order beyond capacity; he doesn't know if they could have sold more than they could produce at that time. The Morgan Sash & Door Company is a Wisconsin corporation doing business in Chicago. They are also in Oshkosh—the Oshkosh company is the Morgan company—they are two different corporations—the Chicago company is the Morgan Sash & Door Company and the Morgan Company of Oshkosh is the parent company. He doesn't know who owns the stock in the Chicago company. The Morgan Sash & Door Company is a branch of the Morgan company; both companies are controlled by the same interests. The Chicago Morgan Sash
205 & Door Company acts as the representative of the Oshkosh company; it has a warehouse here and large quantities of millwork are shipped from Oshkosh to the Chicago warehouse. Large stocks of millwork were carried in Chicago during the years 1918, 1919, and 1920. The sale of millwork to Chicago customers was, to his knowledge, all handled through the Chicago concern. The material would be shipped all over the United States from the distributing point here. It was the policy of his company up to about 1916 to limit the dealings in the sale of millwork to dealers. After 1916 they sold it to both dealers and contractors. The dealers were manufacturers, jobbers, and lumberyards. To his knowledge, they did not sell to scalpers, and during the last three or four years, to his knowledge, they have not sold to them. They didn't sell to scalpers because competition was too keen, they couldn't meet the prices with them; the price was never low enough to get the business and satisfy the scalpers. A scalper is a fellow who is jobbing around the various sources of supply to get the cheapest stuff he can find. Up to 1916 they had not sold to contractors—their business was limited entirely to the dealers, so in 1916 they became an active com-

petitor of the mills. They did not sell to the contractors at the same price they sold to the mills in 1916 and 1917. He doesn't know how they based their price which they made to the mills at that time; they charged the contractors more than the millmen on account of the greater cost of handling contractor business. That is the only reason for the difference. From 1916 on they went after larger operations, and from the mills they competed with they never got very much of that business. He doesn't know if the Morgan Sash & Door Company in Chicago in December, 1919, attempted to buy millwork from other manufacturing concerns.

A. F. KUSCHE, called as a witness on behalf of the Government, being duly sworn, testified as follows:

His name is A. F. Kusche; he resides at Oshkosh, Wisconsin; he is a traveling salesman for the Gould Manufacturing Company located at Oshkosh, Wisconsin. Sheets shown to witness marked "Government's Exhibit 69 to 72, inclusive." Sheets identified
206 by witness; he has seen them before at the Gould Manufacturing Company's office; they are the records of the sales in Chicago and Cook County during the years 1916 to 1920, inclusive. The sheets were prepared by himself about a year ago at the office of the Gould Manufacturing Company in Oshkosh, Wisconsin, from the sales records of the Gould Manufacturing Company, and they are accurate.

Government offers in evidence Exhibits 69 to 72, inclusive.

Witness cross-examined as to sheets. They were prepared from the sales records and invoices to the Chicago and Cook County jobbers and dealers. The invoice is the regular invoice of sash and doors and is made out by the invoice clerk. It is charged on one sheet of paper usually, and if there are a great many items it takes several sheets. These invoice sheets set forth the items which are shipped. The information contained on the invoice sheets is then transferred by the bookkeeper to another book called the sales book. He believes those are the only two records in the office. When he made this compilation he took it from the sales book and also from the ledger account. The ledger account is made up from the invoices. He did not consult the original invoices or check back with the sales book or ledger. He had nothing to do with the making of the entries from the original invoices to the sales book or to the ledger. He doesn't know from his personal knowledge whether the entries are correct or not. Says the books are correct; that they are in Oshkosh, Wisconsin.

Offer withdrawn by Government.

He is familiar in a general way with the general method of the Gould Manufacturing Company in selling its products. He can't say definitely whether or not the Gould Manufacturing Company sells its products to builders and contractors. The Chicago representative of the Gould Manufacturing Company is C. L. Ibsen & Company; that they reshipped out of Chicago and sold in Chicago.

Cross-examination by Mr. Cattell

He is not acquainted with the Chicago & Riverdale Lumber Company, and by referring to the record he states that the Gould
207 Manufacturing Company in 1916 sold to the Chicago & Riverdale Lumber Company material amounting to $6,571.83. There is none shown for 1917. In 1918, $15,267.76; in 1919, 9,148.95. He doesn't know if $3,810 of the latter item was for doors. From 1917 on, C. L. Ibsen & Company handled their products in Chicago, and what the C. L. Ibsen & Company sold the Chicago & Riverdale Company is in addition to the figures just given. The C. L. Ibsen Company figures for the year 1917 are $39,682.51; in 1918, 21,120.88; 1919, 82,733.11; 1920, 157,984.26. The Gould Manufacturing Company sold through the C. L. Ibsen Company in the city of Chicago their products in the above amounts for the periods named. He doesn't know of the material sold by the Ibsen Company went to the Chicago & Riverdale Lumber Company. He doesn't know if C. L. Ibsen Company represented any other manufacturing company; he doesn't know if they represented Roche & Musser, of Muscatine, Iowa.

Witness withdrawn.

Elmer E. Brown, a witness called on behalf of the Government, being duly sworn, testified as follows:

His name is Elmer E. Brown, he lives at Oshkosh, Wisconsin; he is an accountant. In 1918 he was employed by the Helmer Mill Company, of Fond du Lac, and beginning January 4th, 1919, to June 9th, 1923, he has been employed by the Gould Manufacturing Company at Oshkosh, Wisconsin, in the capacity of accountant. He had general supervision over all of the accounting of the Gould Manufacturing Company.

Witness identifies Government's Exhibit 72 for identification, and says that he has seen it before in the office of the Gould Manufacturing Company at Oshkosh; that it was prepared by him and the figures thereon were taken from the sales records. The sales record is a carbon copy of the invoice rendered to the customers. These sales records are correct and they were made under his supervision. The sales record is a carbon copy of the invoice and the posting was made direct from the carbon copy onto the customer's account in the ledger and this was controlled by the accounts receivable ac-
counts and general accounts in the sales ledger. The records
208 that he has before him were taken from the sales record. The documents prepared by Mr. Kusche, of his concern, were taken from the same sales record.

Government now offers Exhibits 69 to 72, inclusive. No objection by defendants. Whereupon the documents so offered were marked and received in evidence as "Government's Exhibits 69 to 72, inclusive."

Cross-examination by Mr. Cattell

Referring to Government's Exhibit 72, which witness has in his hand, he says that it refers to the sales made to the Chicago & Riverdale Lumber Company.

PAUL D. JENSEN, a witness on behalf of the Government, being duly sworn, testified as follows:

His name is Paul D. Jensen; he lives at 4916 North Avenue, Chicago; his business is contractor and builder, in which he has been engaged for thirteen or fourteen years. In 1919 or 1920 he was building some bungalows on the west side; he was putting up twenty-six; they were the ordinary bungalow of five and six rooms with a bath. He bought some of the sash and inside trim from J. P. King and some from Anderson & Lind. He had a little trouble in installing some of the material. The carpenters claimed they couldn't work on it; it interfered with the union.

Motion by counsel for defendants to strike answer as not being responsive. Motion overruled.

Exception on behalf of defendants and each of them.

Says he had a conversation with Mr. Veltman, one of the defendants, and business agent for the carpenters' union in regard to the matter. Veltman told him "the carpenters have no right to put it in because it wasn't union made." He had finished about eight or ten of these bungalows, and Veltman told him that "he couldn't put up any more because he had to use union-made material." He said, "Well, of course I have bought for all of them and I had to use it and there was in one row of course the work." Veltman said,

"I can finish them, but there was some expense to the union on
209 that account, that it was not union made, and I had to give them $50.00." The $50.00 was for one row of house he was putting up at that time. He had another block he was putting up; he paid Veltman about three times on all the bungalows; he doesn't recall the total amount; he knows he paid $50.00 one time and some more another time, he expects he paid altogether around a couple of hundred dollars, more or less. The whole amount all told that he paid was around a couple of hundred dollars. When he had finished the bungalows Veltman wanted more than he had paid him, but he paid him no more. He told Veltman that he couldn't pay any more and didn't want to pay more.

After he paid this money he says the carpenters refused to work on the Anderson & Lind stock because it was against the rule and said that Anderson & Lind didn't belong to the union. The carpenters that worked with him were union carpenters.

Objection by counsel for defendants. Objection overruled. Exception on behalf of defendants and each of them.

Says that he then talked with Joseph Veltman, the business agent, and he said the same thing, that he wouldn't permit the carpenters to use it. He said, "If you use any more of it we will stop the

carpenters and take the carpenters away." The carpenters were ordered off the job by Veltman. He had about a dozen carpenters working for him. He paid two of them $25.00 each to continue working; they said they had been fined by the union. The name of one was Edward Titchart; he doesn't know the name of the other. They told him they had to quit and Veltman told them to quit work. The carpenters said they were fined $25.00 each; that they paid the union themselves. I handed them the money. Veltman told them they could not work on the stuff and if they did he would fine them once more. That was after he had paid Veltman the money he spoke of before. The name of the other carpenter was something like Heitmann.

Motion by counsel for defendant to strike testimony from the record. Motion overruled.

Exception on behalf of defendants and each of them.

210 Cross-examination by Mr. Thompson

He has lived in Chicago seventeen or eighteen years and has been a contractor or builder for more than thirteen years; he does general contracting. During 1918 and the time mentioned he was not a member of the Carpenter Contractors' Association, but was a member of the bricklayers' association and has been a member of the masons' association for the last twelve years; that is, the Mason & Builders' Association. They are the men that put up brick work primarily.

He believes he first saw Veltman in the summer of 1919, in the neighborhood of 5400 West Hirsch Street, where he was putting up some bungalows at that time. He doesn't know what Veltman said to him the first time he saw him, nor the second time he saw him. He remembers one conversation with Veltman in front of the buildings he was erecting on Hirsch Street, when Veltman asked him the reason he was using Anderson & Lind material. He told Veltman, "I know it is nonunion; still I got it a little cheaper than those other fellows." Says that the only point Veltman raised was that the union carpenters should not under their rules install nonunion-made material. Says that Veltman said nothing to him to the effect that if he wanted to employ union carpenters he should sign up the same agreement that the other contractors did. Says he applied to the Carpenter Contractors' Association and signed up with them; he signed up when he went into the Association of Builders. When he went into the Associated Builders he doesn't know of going into anybody's office downtown or whether anybody came to him or communicated with him about signing a card. He says he signed no card at all. Says that in 1919 and 1920 he paid some money to the arbitration board of the Contractors' Association in the Chamber of Commerce Building on the third floor; that the money was paid to the Builders' Association and that it had nothing to do with

Veltman. He paid Veltman the money over on Hirsch Street in the 5400 block. Veltman said he had lots of expenses and that he (witness) ought to pay him $50 to finish the building. He paid Veltman the money in currency. Says it was in 1919, but doesn't just remember the time. There was no talk between he and Veltman about paying the carpenters working for him for the time
211 they had lost at any time. He didn't pay the carpenters anything for the time they lost on account of his difficulty there. The only thing he paid the carpenters other than wages was the fine levied against them by the union.

He believes that the second time he paid Veltman was on Linder Avenue, on a job. He doesn't remember the time. Veltman said that he wanted so much for each building. Altogether he paid Veltman three times. Doesn't remember how much he paid him the second time; thinks it was around $75.00. The third time he paid him around the same amount. Thinks he paid him at Veltman's house; that either he called up Veltman or Veltman called him and told h'm to come down to his house. Says he went into the house; doesn't remember what Veltman said to him or what he said to Veltman when he went into the house. He told Veltman before that he was coming down to pay him that $75.00. That was the only time he ever went to his house. Says he didn't go there several times and try and persuade Veltman to take money to that Veltman would order the carpenters to work for him and against the union. The last time he paid Veltman money was just before the labor convention at Springfield, he believes it was in 1920. After he paid Veltman the last time Veltman asked him if he was going to pay him some more money and he told Veltman that he didn't know, he didn't think so. Says that he believes that in the fall of 1920 he was stopped and Veltman said he wanted some more money. He told Veltman that he wouldn't pay him any more. He doesn't believe that he ever signed up an agreement with the carpenters' union. Says he saw the union install nonunion material in many places and that he did the same thing. He doesn't know of he was violating any law when he paid Veltman money.

Cross-examination by Mr. McKinley

He belonged to the Associated Builders after April 1st, 1920, he belonged to the masons' organization. He was a general contractor and did masonry mostly. Sometimes he did and sometimes he did not sublet his carpenter work. He did carpentry work in 1913 and 1914 and 1915 on some big flat buildings. He never belonged to the Carpenter Contractors' Association itself.

212 Mr. SHALE:

Government's Exhibit Number 64

Proceedings of the outside mens' trial board held July 22nd, 1920. Brothers Lindquit, Quayle, Grassl, Osterhause and Wolfe present.

Albert Heitmann, #181, charged with violation of his obligation to this organization and for violating rule 9 of our working rules, and article 3, section 3, of our outside agreement, while acting as steward on job on Linden Avenue, near North Avenue. Pleaded guilty.

Prosecutor Veltman states: On June 22nd I visited the job at Linden Avenue near North Avenue and found the above-named member and others working. One of the men on the job called my attention to the nonunion material on the job. I then called the attention of all the members on the job to the fact, asking them to remember their obligation as a union man toward our constitution, by-laws, and working agreement. I visited the job regular every other day thereafter and found on July 7th the above-named members had installed the stated material in disregard of the warnings given them.

Defendant Heitman states: Mr. Veltman came and told me about the sash being nonunion. He said before you start to hang it call me up on the phone. I laid off to help fix up a garage and when I came back I called Veltman on the phone and told him we were going to hang the sash and trim, and he said "What of it?" and then he hung up the receiver.

OSTERHAUSE (to defendant). Did you know that you were not to hang any trim that was nonunion?

A. No, not at that time. That is all I have to say.

VELTMAN. You admit I was on the job and when the men told me about the nonunion trim, I spoke to you and told you it was unfair?

A. Yes.

VELTMAN. When you called on the phone I would not talk to you because I do not know who is on the other end of the wire. I went on the job about twenty minu'es after Heitman called.

Mr. VELTMAN. How many men quit on account of the nonunion trim?

A. Two.

213 Mr. VELTMAN. Did any more quit? How about the other man and his son, name Nestle?

A. They were laid off.

Mr. VELTMAN. Are you related to the contractor?

A. No; I am not related to the contractor. I was steward on the job for a couple of weeks. I was never a steward in Chicago before.

MELBY, witness for the prosecution, testifies:

Mr. VELTMAN. You remember I came on the job about June 22nd, and you spoke to me about the nonunion material?

A. Yes.

Mr. VELTMAN. Were you ready to report that?

A. Yes.

Mr. VELTMAN. What did you do in order to report it?

A. I looked at the sash and trim when it came on the job. I did not see no union label on it, and I told my partner. Then we intended to tell Veltman or Tom Church.

Mr. VELTMAN. Did I tell you to leave the job?

A. No; I quit on Monday night when they started to use the sash. The foreman asked me to use the sash. I quit the job on account of the nonunion sash. I knew in 1913 that we were not to use nonunion sash or trim.

BAKKE, witness for the prosecution, states:

I worked there about two weeks.

Mr. VELTMAN. Are you related to the contractor?

A. No.

Mr. VELTMAN. D'd you know about the nonunion sash?

A. Yes; I knew about it when it came on the job.

Mr. VELTMAN. Did I tell you to quit?

A. No; you told us to remember our obligation to the union.

Mr. VELTMAN. Were you asked to use the material?

A. No; I was not asked to use the sash or trim. You did not tell me to quit; I quit on Wednesday because of the nonunion material.

214 Your committee recommends the defendant be fined $25.00.

Ed. Tirchardt, #1, charged with violation his obligation to this organization and for violating Rule 9 of our working rules and article 3, section 3, of our outside agreement, while acting as steward on job on Linden Avenue near North Avenue. Pleaded not guilty.

Prosecutor Veltman states: The testimony in this case is the same as on the specifications I wrote on the charges. I came on the job about June 22nd, and found the above-named member and others working. One of the men on the job called my attention to the nonunion material on the job. I then called the attention of all the members on the job to the fact, asking them to remember their obligation as a union man toward our constitution, by-laws, and working agreement. I visited the job regular every other day thereafter, and found on July 7th, the above-named member had installed the stated material in disregard of the warnings given them.

Prosecutor Veltman questions defendant as follows: You remember when I came on the job on the 22nd or 23rd of June, and I spoke to you about the nonunion material?

A. You came on the job about that date, but you did not speak to me about the nonunion material until about the third time you came on the job.

Mr. VELTMAN. You admit I was on the job every other day thereafter?

A. Yes.

Mr. VELTMAN. Did I speak to you about the material?

A. Yes; you called my attention to the material, and said you would prefer charges against the men if they fitted it. I knew the material was nonunion.

OSTERHAUSE to defendant. Did you know you were not to use nonunion material?

A. I did not know about that material, as it was being used on other jobs, and they were not bothered.

Mr. VELTMAN. You knew it was wrong, and about July 7th the sash was fitted. I asked who fitted it and you admitted you did, didn't you?

A. Yes; you told us to call you before we fitted it. The steward called you up, and he said that you said "alright." Then Veltman came and the Steward was not on the job that time, and he
215 went to the other men. He did not come to me. I was foreman. The other ash is still on the job, and has not yet been set. I had charge of another job about two blocks up the street some time last spring, and we used the same material, and were not bothered about it. We finished the job with it.

HEITMAN, the steward on the job, testifies as follows in his defense.

VELTMAN questions Heitmann. When you called me on the phone, what was said?

Defendant HEITMAN. I told you we were going to hang the sash.

Mr. VELTMAN. Every man knew the sash and trim was wrong.

Mr. HEITMANN further states: I called him on the phone, and I could get no satisfaction from him. All he said was "What about it" and "alright," and then he hung up the receiver.

OSTERHAUSE to Heitmann. After you talked with Veltman did you tell this man to hang the sash?

Defendant HEITMANN. No; I told him just what Veltman told me.

Defendant TIRCHART states: Veltman did not come to me. He went to the men on the job. Paul Jensen was the contractor. I worked nearly all spring for him. He used the same trim on his other jobs and we were not bothered.

Your committee recommends the defendant be filed $25.00.

Motion by counsel to strike testimony of witness Paul D. Jensen and the minutes pertaining to the same subject matter. Motion overruled.

Exception on behalf of defendants and each of them.

W. L. BECKER, called as a witness on behalf of the Government, being duly sworn, testified as follows:

His name is W. L. Becker; he lives in Oshkosh, Wisconsin; he is treasurer and accountant for the R. McMillen Company, Oshkosh, Wisconsin. They are engaged in the sash, door, blind, and in-
216 terior millwork business. He is acquainted with the sale of material by the McMillen Company and a good deal of their material is sold generally throughout the United States. They sell to sash, door, blind, and interior millwork dealers. They do not sell to contractors and builders. Government's Exhibit No. 73 marked for identification. He has seen the sheet marked "Government's Exhibit 73 for identification" before at the office of the R. McMillen Com-

pany. This sheet was prepared by himself from the copy of the original invoices that went direct to customers. In his duties as accountant he has direct supervision of these invoices and they are correct.

Government offers in evidence Exhibit 73, whereupon said document was marked "Government's Exhibit 73" and received in evidence.

Cross-examination by Mr. Cattell

The list which has just been introduced as Government's Exhibit No. 73, contains a memorandum of the amount of goods the McMillen Company shipped the Chicago & Riverdale Lumber Company in 1916, 1917, 1918, and 1919. In 1916 they shipped $2,700.00 worth of goods to the Riverdale Lumber Company; in 1917, $14,000.00; in 1918, $9,500.00; in 1919, $8,800.00. He doesn't know how much of the item of $8,800.00 in 1919 was for doors. E. A. Goldthorp was their sales manager in Chicago and he knows his signature when he sees it. Identifies a document issued by the McMillan Company at Chicago, as bearing the signature of Mr. Goldthorp. Document marked "Exhibit 1" for the Chicago & Riverdale Lumber Company. Identifies a document as bearing the signature of Mr. Goldthorp, which is marked "Chicago & Riverdale's Exhibit No. 2." Identifies a document as bearing the signature of Mr. Goldthorp, which is marked "Chicago & Riverdale's Exhibit No. 3." They are all communications from his company to the Chicago & Riverdale Lumber Company. The goods they shipped to the Chicago & Riverdale Lumber Company were shipped direct in carload lots to the warehouse of the Riverdale Company in Chicago.

Motion by counsel for union defendants to strike testimony of witness on grounds of being immaterial. Motion overruled.

Exception by defendants and each of them.

217 Cross-examination by Mr. McKinley

He doesn't know Mr. D. H. Doyle and has never seen him; nor Mr. McGimsie, Mr. Wehrwein, Mr. Scown, or Mr. Stressenreuter. He never had any business dealings with them. His firm may have had. They do not sell to a jobber or mill and add to the price so the contractor may get the difference.

Cross-examination by Mr. Childs

Identifies a letter on the letterhead of the McMillen Company as one sent out by his concern. He thinks the same letter or one similar was sent to all the trade. A number of such letters were sent along in 1919 and 1920 pertaining to the general nature of their business. The general effect of these letters was that they were heavily oversold.

Letter marked "Millmen's Exhibit A for identification."

FRANK J. HEITMANN, a witness called on behalf of the Government, being duly sworn, testified as follows:

His name is Frank J. Heitmann; he is president of the Heitmann Lumber Company and has been connected with that concern since 1896. The Heitmann Lumber Company are retailers of lumber, manufacturers and dealers in sash, doors, blinds, mouldings, and interior finish. They manufacture sash but no doors. During the years 1916 to 1921 he was a member of the Lumbermen's Association of Chicago, Division G. During the year 1918 he attended some of the meetings of Division G. He attended meetings when the labor committee had under discussion the wage agreements with the employes. The wage agreement for the period of 1918, 1919, and 1920 was signed April, 1918, and went into effect May 1st, 1918.

Objection preserved on behalf of millmen and contractor defendants as to conversations or statements in absence of these defendants.

Says there was discussion at the meetings relative to employing a man in the city of Chicago to visit various buildings where construction work was in progress to determine whether or not the sash, door, and trim bore the union label.

218 He says the meeting was either in March or April, 1918. The date of the meeting was May 13th, after the agreement had been signed. His recollection is that Mr. Lockwood, of Lockwood & Strickland, discussed the advisability of employing a man to visit the jobs where millwork was being furnished to determine whether it was union or nonunion material. He doesn't recall if anyone objected to the employment of this man; he suggested that it would be well to first get the advice of an attorney on this proposition. He stated that before a motion of this kind should be put, it should be referred to their attorney for further advice as to the legality of such a thing.

Objection by counsel for defendants as to witness stating what he said as to why he thought it illegal. Objection overruled.

Exception on behalf of defendants and each of them.

He said that before he would vote on it he wanted it referred to their attorney for an opinion. He doesn't know if at the time this matter was discussed there was also under discussion article 3 of the contract between the carpenter contractors and the Carpenters' District Council. It may have been discussed prior to this meeting. He thinks article 3 was discussed during the months of March and April; he has heard article 3 discussed at the millmen's meeting in the month of March, 1918. During that time he was selling material, including sash, door, and trim, at his lumber yard in Chicago. Prior to 1918 he did not manufacture all he sold. About one-third of the amount of his sales were manufactured in his establishment; the other two-thirds were purchased anywhere in the United States, wherever they could get them the cheapest. They purchased from the Long Bell Lumber Company prior to 1918; their office is in Kansas City, but they have different mills in the southern part of the United States. They bought from the Morgan Sash & Door Com-

pany, located in Chicago. Their manufacturing plant is located in Oshkosh, Wisconsin. They bought some doors from a plant in Muscatine, Iowa, but he doesn't remember the name. They bought a small amount from the Paine Lumber Company. Doesn't think they bought from the McMillen Company. Didn't buy from the Radford & Wright Company, the Farley Lechter Company.

219 After 1918 they commenced to manufacture most of their material, except doors. There was a change in Chicago which necessitated them changing their plant—nonunion goods became unacceptable to their trade and they were obliged to manufacture nearly everything. They installed machinery in their plant, which together with alterations cost in the neighborhood of $15,000.00. They equipped their plant to manufacture everything except doors. In the spring of 1918 they had some doors on hand which they had purchased from outside sources. Arrangements were made for the use of their material. Until the spring of 1919 they were permitted by the union to stamp the doors "O. K. District Council." In the spring of 1919 they entered into a contract with the Hardwood Products Company, of Neenah, Wisconsin, to secure doors which they were not able to manufacture. Identifies contracts between his concern and the Hardwood Products Company, of Neenah, Wisconsin.

Contract marked for identification, "Government's Exhibit 74."

Objection by counsel for defendants to witness stating how he came to make this agreement with the Hardwood Products Company. Objection overruled.

Exception on behalf of defendants and each of them.

In the early spring of 1919 he had meetings with the defendant, E. D. Beals. Present at these meetings were Mr. Olson, of the Standard Sash & Door Company; Mr. Traeger, of the VonPlaten & Dick Company; Mr. Haring, of the Melrose Mill Company; Mr. King, and others, whose names he doesn't remember. Says ten or twelve concerns were represented at these meetings, that is, manufacturers of millwork in the city of Chicago.

With reference to making the agreement, he believes that Mr. Beals made the statement that he woud be willing to enter into an agreement with us for our supply of doors. Inasmuch as we were anxious to get union doors, wherever we could, we were willing to enter into such an agreement for the supply of our doors. Mr. Beals stated if they could get enough business they would be willing to enter into an agreement with us to furnish us doors. That was about the substance of that talk. This meeting was in the spring of 1919. He wouldn't say that Brims in particular was mentioned at these meetings.

220 Objection by counsel for defendant, Hardwood Products Company. Objection overruled.

Exception.

He thinks that Beals did say at that meeting that if their plant became unionized they could enter into this contract with us to

furnish these doors. Beals said that if they could arrange with the Carpenters' District Council of Chicago for the unionizing of their plant they could make arrangements with us to furnish the union doors. Says that is his signature on the contract. He believes it is also Mr. Beals's signature; he didn't see him sign it. Contract may have been delivered to him through the mail.

Government offers in evidence its Exhibit No. 74.

Objection by counsel for defendant, the Hardwood Products Company. Objection overruled.

Exception.

Government asks to have marked for identification certain contracts as Government's Exhibits 75 to 82, inclusive.

Objection by counsel on behalf of union defendants. Objection overruled.

Exception.

Counsel for Government reads Government's Exhibit 74, in words and figures as follows:

221 **Government Exhibit 74 Id.**

Supplement to "Schedule A" (prices on doors), attached to contract, between the Hardwood Products Company and Heitman Lumber Company, Chicago, dated March 26th, 1919:

	Over 17¼ surface feet in door	From 15 to and including 17¼ surface feet in door
2¼ pl. oak fronts ¼" veneer, 1 light case in glue, no moulding, 18" bottom rail.	32c. per sq. ft.....	34c. per sq. ft.
2¼" pl. oak fronts ¼" veneer, 1 panel, 1 light, case in glue, no moulding, 12" bot. rail.	36c. per sq. ft.....	38c. per sq. ft.
If the two above designs are desired with divided lights, add 20c. net per light for doors with less than 15 lights, and 18c. net per light for 15 lights or over; these prices per light to include beads for glass.		
Rear doors #1 pine or fir, 3 x panel below, 1 light above, 1¾", solid yellow pine panels; bead for glass.	18½c. per sq. ft.....	19½c. per sq. ft.
In above design, deduct 10c. per door if no bead is required; for four divided lights no bead, add 30c. net per door; for four divided lights with beads add 45c. net per door.		
Stock two vertical panel door #1 pine, or fir stiles & rails, ven. fir panels 1¾".	16½c. per sq. ft.....	18c. per sq. ft.
In above design add 50c. net per door for 1¾" thickness.		
#2 solid pine 1¾" 5 x panel 2'-8" x 6'-10" with 11½" bot. rail which can be cut down to 6'-8" door.	19c. per sq. ft.....	

Price schedule on divided light French doors:

For the frame, without lights, add $1.95 net per door for unselected birch and plain red oak and $1.20 net per door for solid pine or fir, to the following prices:

1⅜"	pine or fir	4⅞"	stiles, 9½"	bot. rl.,	$ .75 per 100 united inches
1¾"	"	"	"	1.10	"
1⅜"	uns. birch	"	"	1.16	"
1¾"	"	"	"	1.36	"
1⅜"	pl. red oak	"	"	1.36	"
1¾"	"	"	"	1.59	"

222 **If 5½" stiles and 12" bottom rail is desired, add 20c. net per door for 1⅜" and 25c. net per door for 1¾". The above prices do not include bead for glass around the frame; if beads are desired, add 20c. net per door for pine, fir or birch, and oak.**

The term "united inches" is understood to mean the sum of the height of the door in inches plus the width of the door in inches; for example, the united inches in a 2'–8" x 6'–8" door would be 32" plus 80" equals 112 united inches.

Prices for divided lights with above frames:

	Pine or birch	Oak
1⅜", 10 to 15 lights per door	$.112	.128 per light.
1⅜", 10 to 15 lights per door	.129	.146 " "
1⅜", 15 lights or more	.109	.123 per light.
1¾", 15 lights or more	.115	.131 " "

The above prices per light include beads for glass. If beads are not desired, deduct 40c. net per door for oak and 30c. net per door for pine, fir, or birch.

Prices on 2¼" K. D. pl. oak stiles and rails fronts, f. o. b. Chicago, Illinois (prices are per 100 lineal feet):

2¼" stiles or rails, 5⅞" wide, ¼" veneer ---------- $23.00 per 100 lin. ft.
2¼" rails, 17⅞" wide, " ---------- 63.50 " " " "

Memorandum of agreement entered into this 26th day of March, 1919, by and between Hardwod Products Co., a Wisconsin corporation, having its place of business in the city of Neenah, and State of Wisconsin (hereinafter called the seller), and Heitmann Lumber Company a corporation, having its place of business in the city of Chicago, county of Cook, and State of Illinois, hereinafter called the purchaser, witnesseth that:

Whereas the seller is the manufacturer of doors, panels, and other similar wood products which are used in large quantities by the purchaser, and the purchaser desires to arrange for its requirements of such articles for use in Cook County, Illinois, for the period of this contract,

Now, therefore, in consideration of the permises and of the mutual covenants and agreements hereinafter contained to be performed by the respective parties hereto, it is agreed:

The purchaser agrees to buy from the seller and seller agrees to sell and deliver to the purchaser, for the prices and upon the
223 terms and conditions hereinafter provided, all the articles manufactured by the seller of standard grades and used by the purchaser, set forth in a schedule of such articles attached hereto and made a part hereof as "Schedule A," which the purchaser shall require in addition to its own manufacture in its business in Cook County, Illinois, for a period from the date hereof to May 1st, 1921.

Prices. The prices to be paid for such articles shall be as set forth in said "Schedule A" opposite each item therein specified. All prices shall be f. o. b. Chicago, Illinois, unless otherwise stated. It is understood that these prices are based upon the present cost of material and labor plus the present tariff freight rates; it is therefore agreed that these prices shall be subject to revision every six months and if at the time of such revision either the cost of material or labor or freight rates have declined, the purchaser is

to have the benefit of such decline; in the event, however, that such costs or freight rates have advanced, the purchaser is to pay the advance; such revision shall be made February 1st and August first in each year, the revised prices to be effective March first and September first, respectively.

Terms. Payment for all articles delivered shall be 60 days net, or 2 per cent cash discount on or before the 8th day of the month next succeeding the date of shipment.

Deliveries. The purchaser shall furnish the seller with each order complete specifications and designs, which must be received by the seller at least thirty days prior to the date specified for the delivery where the articles called for are stock designs shown on Schedule A other than plain slab or sanitary doors; where plain slab or sanitary doors or special designs are ordered, specifications and designs must be furnished at least ninety days prior to date specified for delivery; in the event that delivery of such specifications and designs is delayed, the time for delivery on such orders shall be automatically extended for an equal period beyond the time for delivery specified in the order. In any event, the purchaser agrees to order materials as required under this contract promptly after purchaser becomes advised of the need for same. Delays by the seller in the performance of this contract or in any order given hereunder shall be excused whenever the seller is prevented from producing or delivering, by strikes, differences with workmen, fires, accidents, delays, or difficulties in transportation, acts of God, or the public enemy, or any other causes beyond the seller's reasonable control. Any such delayed performance shall be resumed and completed by the seller as soon as reasonably possible after such preventing cause is removed. The seller agrees during the life of this contract to sell no articles covered by this contract to any lumber yard or so-called "scalper" in Cook County, Illinois.

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Label. All goods manufactured and sold under this contract shall pass inspection by the Chicago District Council of the United Brotherhood of Carpenters and Joiners of America, if required.

Default. If the purchaser fails to pay, when due, for any shipment under this contract, and if such default continues for five days after written demand, the seller may, at its option, at any time prior to payment thereof in full, suspend further deliveries until such payment is made, or cancel any portion or all of this contract remaining undelivered.

Special orders. Schedule "A" attached hereto and the prices therein fixed are intended by the parties hereto to cover only stock designs regularly manufactured by the seller and used by Chicago mills. If at any time the purchaser is in the market for special designs, it is agreed that the seller shall have a first opportunity to examine the specifications for such special designs, and to bid thereon, and its bid shall be given preference by the purchaser,

provided the price stated in said bid is at least as favorable to the purchaser as any other bona fide bid.

Executed in duplicate the day and year first above written.

(Signed) HARDWOOD PRODUCTS COMPANY,
By C. B. CLARK, *President.*
HEITMANN LUMBER COMPANY,
By FRANK J. HEITMANN, *President.*

225 **Schedule A**

Prices on stock designs of doors shipped in car lots f. o. b. Chicago, Illinois:

	Over 17¼ surface feet in door	From 15 to and including 17¼ surface ft. in door
Stock one panel ven. birch 1⅜	22c. per sq. ft.	23c. per sq. ft.
Stock one panel ven. oak 1⅜	24½c. " " "	25½c. " "
Stock two panel ven. birch 1⅜	19½c. " " "	20c. " "
Stock two panel ven. oak 1⅜	22c. " " "	23c. " "
Stock two vertical panel ven. birch 1⅜"	21c. " "	22c. " "
Stock two vert. pan. ven. oak 1⅜"	23c. " "	24. " "
Stock two panel 1⅜" solid wh		
Pine stiles & rls., ven. bir. panels	15c. "	15½c. "
Stock two panel 1⅜" solid fir or spruce stiles & rls., ven. birch panels	14½c. "	15c. "
Stock oak front 1¾", 18" bot. rl., 5¼" stiles, 1 lt., without mldg. ¾" ven	27½c. "	29c. "
Stock oak front 1¾", 1 lt., 1 pan. below 12" bot. rl., 5¼" stiles without mldg. with ½" ven	31c. "	33c. "
Plain slab or sanitary doors 1¾" birch	39½c. "	41½c. "
Plain slab or sanitary doors 1¾" oak	42c. "	44c. "
Stock 5x panel pine doors, yel. pine panels (flat) 1⅜" #1	13½c. "	15c. "
Stock 5x pine doors, yel. pine panels (flat) 1¾" #1	16½c. "	18c. "
2c. per foot more for raised panel pine		

No doors figured less than 15 surface feet; for less than 10 doors of a size and kind add 10% extra; veneered doors in oak or birch to have sawed or rotary panel veneers, all jointed veneers to be fairly well matched for color and figure; net extra for 1¾" thickness 50c; one panel 1⅜" doors same price as 1¾"; all doors to be figured the nearest ¼ (one-quarter) surface foot; for moulding 1¾" oak front doors with egg & dart or plain raised mold add $1.40 per door for one light door, and $1.90 per door for one panel one light door; all doors shipped local freight to be charged extra for crating and difference between local and carload rate; all stock designs of interior doors to have cove & bead sticking (except solid pine doors which will be furnished with O. G. sticking at buyer's option).

226 Prices on veneered panels, f. o. b. Chicago in car lots: All panels to be 72" long (with the grain); stock widths as given below:

Widths	⅛" 3 ply (⅜" before stickin sanding)		⅜" 3 ply (¾" before sanding)		⅛" 5 ply (1½" before sanding)	
	S1S	S2S	S1S	S2S	S1S	S2S
Uns. birch or yellow pine:						
18", 20", 22", 24" wide	10½c.	11¾c.	11½c.	12¾c.	16¼c.	17½c.
26", 28", 30" wide	11c.	12¼c.	12c.	13¼c.	16¾c.	18c.
Uns. plain red oak:						
18", 20", 22", 24" wide	11¾c.	13¼c.	13c.	15c.	17½c.	19½c.
26", 28", 30" wide	12¾c.	14¾c.	14c.	16c.	18 ½c.	20½c.

Prices given per square foot (surface measure); if panels are ordered unsanded, deduct ½ c. per square foot; face veneers to be sawed or rotary cut; the face veneers to be not less than $\frac{1}{16}$" thick before sanding; jointed veneers to be fairly well matched for color and figure; panels to be crated in bundles approximately 10" deep, above prices to include crating; if shipments are desired by local freight, buyer to pay the difference between local and carload rate of freight; the caption "S1S" and "S2S" is meant to mean "one good face sanded," and "two good faces sanded" respectively; panels with one good face are to have backs admitting sound defects including knots and pin-worm holes and splits open not to exceed ⅛" in width, backs to be any wood:

Prices on K. D. veneered stiles and rails, f. o. b. Chicago in car lots. Prices given are per 100 lineal feet of stock for the various thicknesses, widths, and wood given below:

	Plain red oak		Unx. birch	
	1¾"	1¾"	1⅝"	1¾"
Stiles or rails:				
4⅛" wide	12.80	15.00	11.25	13.30
5½" wide top r	14.80	17.40	13.20	15.60
6" wide	15.30	17.80	13.80	16.00
Rails:				
8⅛" wide rail	17.70	21.30	15.60	19.10
9½" wide	20.00	22.70	17.60	20.30
12" wide bott	23.90	27.80	21.10	24.80
18" wide		48.10		43.50

227 Stock to be unsanded, edges trimmed squarely ready for sticking; no stiles over 7' 6" long no rails over 34" long; veneers to be ⅛" and either sawed or rotary cut, the veneers if sawed on rails over 5½" wide to have one or two pieces, the two-piece veneers to be fairly well matched for color and figure; if shipments are desired by local freight, buyer to pay for crating and difference between local and carload rate of freight; all stiles and rails to be figured and invoiced at next even inch, o. ex., 6' 7" figured as 6' 8", 2'–3½" as a'–4", etc:

2— 8" Rail for 3°
2—10 " "

Whereupon the documents heretofore marked for identification "Government's Exhibits 75 to 82, inclusive," were received in evidence as Government's Exhibits 75 to 82, both numbers inclusive.

Council for Government continuing reading. Government's Exhibit 75 is between the Hardwood Products Company and the VonPlaten & Dick Company. It is signed by the Hardwood Products Company by C. B. Clark, and by the VonPlaten & Dick Company by H. D. Traeger, secretary.

Government's Exhibit 79 is between the Hardwood Products Com-Company and the Pilsen Sash & Door Company and is signed on behalf of the Hordwood Products Company by C. B. Clark, and on behalf of the Pilsen Company by Anton J. Bartuska, president.

Government's Exhibit 77 is between the Hardwood Products Company and the California Manufacturing Company; signed by the Hardwood Products Company by D. L. Kimberly, vice president, and on behalf of the California Manufacturing Company by Frank J. Bartuska, secretary.

Government's Exhibit 78 is between the Hardwood Products Company and C. E. Peterson Company and is signed by the Hardwood Products Company by E. D. Beals and by the C. E. Peterson Company by John Westberg, secretary.

Government's Exhibit 79 is between the Hardwood Products Company and the Standard Sash and Door Company, and is signed by the Hardwood Products Company by C. B. Clark, president, and by the Standard Sash and Door Company by John Algot Olson.

Government's Exhibit 80 is between the Hardwood Products Company and the Vincent Dlouhy Sash & Door Company,
228 and is signed by the Hardwood Products Company by E. D. Beals, president, and no signature by the Vincent Dlouhy Company.

Government's Exhibit 81 is between the Hardwood Products Company and the Commercial Sash & Door Company, signed by the Hardwood Products Company by E. D. Beals.

Government's Exhibit 82 is between the Hardwood Products Company and the Melrose Mill Company and is signed by the Hardwood Products Company.

He attended meetings of the Millmen's Association wherein a trade discount to the Carpenter Contractors' Association by the millmen was discussed. He doesn't remember if the trade discount was discussed at the meeting of June 10, 1918. He doesn't remember being at the meeting of June 10th, 1918. He didn't represent his company at every meeting. He thinks the company may have had a representative there. He couldn't say that at any meeting he attended of the Millmen's Association prior to June he heard Mr. Rinn make a statement that the labor committee had made some promises to the Carpenter Contractors' Association. He couldn't say that he heard Mr. Reynolds or Mr. Morris make any statements with reference to trade discounts at the meetings. The first time that he heard the trade discount question discussed at any length was at a meeting where Mr. Green came there as a representative of the Carpenters & Builders' Association. He was at the meeting of June 24th, 1918, which was the meeting that Mr. Green attended. He believes that Mr. Doyle was also there—he doesn't remember any other representative. Mr. Green appeared there in connection with a complaint and stated in substance that their association should be entitled to a trade discount. He said further that their organization having made an agreement with the union, accepting article 3 as they had it written, that they should have something in return in the way of a trade discount. He believes that Green said they were promised something in return; that some committee

from the millmen's organization had made some promise as to a trade discount.

Document marked "Government's Exhibit 83 for identification."

He identifies a letter marked for identification as Govern-
229 ment's Exhibit 83, and says that he believes that he has seen the letter before and thinks that it was produced before the grand jury on a subpœna.

Government offers in evidence its Exhibit No. 83.

Objection on behalf of union defendants, the contractor defendants and the Hardwood Products Company. Objection overruled. Exception on behalf of defendants and each of them.

Whereupon the document heretofore marked as Government's Exhibit 83 for identification was received in evidence as Government's Exhibit 83.

Counsel for Government reading: Letter marked "Government's Exhibit 83" is on the letterhead of the Lumbermen's Association of Chicago and is dated March 19, 1919, and is addressed to Division G, and reads as follows:

"GENTLEMEN: At a very interesting meeting of Division G held March 18th the trade relations committee reported on their conference with the Carpenter Contractors' Association, submitting the agreement enclosed herewith, which was adopted. It was the sense of the meeting that they should be congratulated upon the successful arrangements they had made.

"The arbitration committee appointed in connection with this agreement consists of Mr. Lockwood and Mr. Knight.

"It was decided to hold monthly meetings the third Tuesday evening of every month to receive reports from all committees. At the next meeting to be held April 22d, at 6.30 p. m., we will have a splendid report from the committee on market conditions, and I am quite sure that members will lose if not present to hear this valuable report.

"Division G has finally aroused from its lethargy, and expects to legislate on all matters of interest to the members. This letter gives you due notice to reserve this date, so that you will not miss this meeting.

"Another notice will be sent you later.

"Signed E. E. Hooper, secretary."

Witness says that the place of business of the Hardwood Products Company in 1918 was in the Peoples' Gas Building, 122 S. Michigan Avenue, Chicago, Ill.

230 Cross-examination by Mr. Dobyns

He doesn't know of the Hardwood Products Company having a factory in Chicago or manufacturing any products in Chicago. They had a salesman in Chicago; he doesn't remember the name; he had an office in the Peoples' Gas Building. Says they transacted all their business with the Hardwood Products Company through

its Chicago office. He first saw Mr. Beals in connection with making the contract for the purchase of goods in the fall of 1918; he talked with Mr. Beals before the contract was entered into at the Lumbermen's Association rooms in the Lumber Exchange Building. Mr. Beals was present there. They also had meetings at the Swedish Club on the north side; most of the meetings were held there—one or two of the meetings were held at the lumbermen's rooms. These meetings ran along for a number of months. The contract was entered into on March 26th, 1919; he should judge that ten or twelve mills entered into the contract at that time out of the forty or fifty in Chicago. As far as he knows he attended about two-thirds of the meetings held. He doesn't believe that at any of the meetings where he was present and also where Mr. Beals was present, he ever heard article 3 mentioned; says they were not interested in article 3 at those meetings. He doesn't remember talking that over with Mr. Beals. At no time when Mr. Beals was present was there any conversation in his presence about shutting anybody out in Chicago. He heard no such discussion at any of the meetings that he has testified to. In his negotiations with Mr. Beals, he was trying to get the contract for the sale of his doors. It took some time to get all the contracts signed up. There may have been some objection on the part of various millmen to entering into this contract from time to time; it took Mr. Beals three or four months to get eight of the contracts signed up. These contracts provided for the shipment of the requirements of the companies that entered into the contract, from Wisconsin down to Chicago. His company did not sell to scalpers. The only question that was discussed at any of the meetings at which he was present, was the question of the sale of doors to these people.

231 Cross-examination by Mr. Childs

He has been in the millwork business in Chicago since 1896 and has been employing union men since 1900. Eight or ten concerns were represented at the meeting that he had with Mr. Beals. Eventually eight contracts were signed up; he couldn't say definitely if those particular eight companies, were the ones mentioned in the contracts. The original eight present at these meetings were Mr. Haring from the Melrose Mill; somebody from Von Platen & Dick; someone from the Standard Sash & Door Company and from Barr & Collins; Neilsen Brothers were represented there, also P. J. King and the W. F. Bleck Company. He understands that Nielson, himself, King and Bleck are not defendants in this case, and he understands that of the first eight that were there when he talked this over with Mr. Beals, that only four of those eight are defendants in this case. P. J. King & Company were engaged in the millwork business; he doesn't think they were members of Division G. He doesn't believe that the W. F. Bleck Company was a member of Division G. A. T. Stewart was a member of Division G, and he believes that

Stewart signed one of the contracts. The Pilsen Lumber Company he believes were members of Division G. Says that this contract of the Hardwood Products Company had nothing to do with Division G; that it was not a Division G proposition in any sense of the word; that the Hardwood Products Company signed up contracts with those who were members of Division G, and with those who were not members. He first got in touch with the Hardwood Products Company in the fall of 1918, he doesn't know the exact date. In the spring of 1918, he stated that he had some nonunion made doors on hand which were given the O. K. stamp. On April 1st, 1918, they were taking care of practically everything except doors and sash and later on they manufactured their own sash. In 1918, in the fall, they were interested in securing a supply of union made doors. He may have understood that the Vincent Dlouhy Sash & Door Company were manufacturing their own material with the exception of doors and windows. He was fairly familiar with the general situation among mills in Chicago. He couldn't say if the California Sash & Door Company were buying their windows. He doesn't know if the Melrose Mill Company, which signed one of the
232 contracts, were buying their doors and windows prior to 1918. He doesn't know of ever selling the Melrose Mill Company any doors and windows. The Melrose Mill Company represented by Mr. Haring, entered into a contract with the Hardwood Products Company similar to the contract that he entered into. He knows the Commercial Sash & Door Company and to his knowledge they had no equipment for manufacturing doors and windows prior to 1918. He doesn't think that Barr & Collins had any equipment for manufacturing doors and windows prior to April, 1918, and he doesn't think that C. E. Peterson had any such equipment. He doesn't think that the Melrose Mill Company had any such equipment for manufacturing their doors prior to April, 1918.

The mills mentioned here did practically the same manufacturing that he did in 1918; in other words he understands that they were buying their stock material from outside sources. He entered into this hardwood products contract purely for the purpose of getting union made doors and that was his sole object. The doors were shipped to him under that contract, to Chicago, and a great many of them were installed here in buildings. He never had any trouble having the union made doors of the Hardwood Products Company installed at any time. He knows Mr. Beck of the Beck Lumber Company and in a general way he thinks he is familiar with his business. He doesn't think that in April, 1918, Mr. Beck was manufacturing his own doors and windows. He is familiar with the business of the Chicago & Riverdale Lumber Company and he doesn't believe that they were manufacturing their own doors and windows in the spring of 1918—they were buying them from outside sources. As to the VonPlaten & Dick Company, he can only answer as to doors. As to the Andrews Lumber & Mill Company,

he thinks their business is similar to his; they have a lumber yard and also have a mill business in connection with it; they purchased doors and sash from the outside prior to 1918. The South Side Interior Finish Company prior to 1918, purchased some of their doors and windows. He doesn't know about the business of the Hartman-Sanders Company. He believes that the Hartman-Sanders Company is engaged primarily in maufacturing porch columns and material of that kind, rather than interior trim and interior finish. He knows what the business is of the A.
233 Deisch Company and thinks they are engaged in the mill-work business. He doesn't know anything about their business and doesn't know if it is practically all green-house work; he doesn't come in contact with them. He attended a number of meetings of Division G, in the spring of 1918. Doesn't believe he ever saw Mr. Kartheiser, the superintendent of the Vincent Dlouhy Company at any meetings of Division G. He might know Mr. Weidener of the Hartman-Sanders Company by sight—identifies him in court—he never saw him at any meetings of Division G. He knows Mr. Newquist—he doesn't recall ever seeing him at any meetings of Division G during the year 1918 or 1919. He thinks that Mr. Haring of the Melrose Mill Company was a member of Division G in March, April, May, and June, 1918. He doesn't know where Mr. Gamble of the Chicago & Riverdale Lumber Company was in the winter and spring of 1918. He doesn't remember seeing Mr. Diesch at any meetings of Division G during 1918 and 1919.

Cross-examination by Mr. Fink

Says he thinks they had a meeting in March, 1918, of Division G, at which article 3 was discussed; his recollection is that present at that meeting were Mr. Haring, Mr. Collins, and Messrs. DeSwart, Morris, Reynolds, Oldson, and Rinn. He doesn't remember who else was present. He may have attended two meetings of Division G before the particular meeting at which article 3 was discussed in the year 1918. Minutes were kept of the meetings that he attended. He attended a meeting at which Mr. Green made a speech and in which Green requested a trade discount. That was the only meeting he attended at which Mr. Green made a speech. Says that Green came in and wanted to know why the association would not extend to the Carpenters & Builders' Association a trade discount, stating that that association having accepted article 3, they felt they were entitled to some consideration in the way of a trade discount. Then a discussion among the members followed. Green also said that some committee had made them some kind of a promise for a trade discount; that is, a committee from Division G. He has related everything in substance that he remembers that Mr. Green said.

234 Cross-examination by Mr. Cattell

No representative of the Chicago & Riverdale Lumber Company was present at any meeting of the Hardwood Products Company's contract. His best recollection is that some representative of the Riverdale Company was at the meeting of June 24th, 1918. Witness refers to minutes of the meeting of June 24th, 1918, and states that the minutes do not show the Riverdale Company as being represented at that meeting. His best recollection is that some representative of the Chicago & Riverdale Lumber Company attended the meetings in March, about which he testified to. He recalls nothing that they said.

Cross-examination by Mr. McKinley

He was not at the meeting in April or June 24th, where someone said that the contract was not just as originally stated, and he knows nothing about it. He knows that Mr. Green is a contractor; that he is a former president of the Carpenter Contractors' Association, which is probably eight or ten years old. He doesn't know if Green was a member of the Carpenter Contractors' Association at the time he spoke, or whether he was authorized to speak. I wouldn't know how to describe him as a speaker—I think he presented his case in good shape. He h[illegible]n't seen Green in the court room; he would know him if he sa[illegible]m. Says that Doyle didn't have much to say; he doesn't think [illegible]yle is much of a talker. That is the only meeting at which he [illegible]ver say Doyle. He thinks the meeting at which he saw Doyle and Green was sometime in June, 1918, which was after the agreement went into effect. He doesn't believe that he saw Messrs. Wehrwein, Doyle, Doherty, or Stressenreuter at any meeting. He knows Wehrwein and Stressenreuter and he would remember them if he saw them.

Motion by counsel for union defendants to strike out testimony of this witness. Motion overruled.

Exception on behalf of defendants and each of them.

Government rests.

235 Union defendants, Exhibit 1, is Constitution and Laws of the United Brotherhood of Carpenters and Joiners of America and Rules for Subordinate Bodies under its Jurisdiction. The portions of said exhibit which are material to the issue in this case are as follows:

Constitution

Name of organization

Section 1. This organization shall be known as the United Brotherhood of Carpenters and Joiners of America, and shall consist of an unlimited number of local unions and members subject to its laws and usages and shall not be dissolved while there are three (3) dissenting local unions.

* * * * * * *

Objects

Section 2. The objects of the united brotherhood are: To discourage piecework, to encourage an apprentice system and a higher standard of skill, to cultivate feelings of friendship among the craft, to assist each other to secure employment, to reduce the hours of daily labor, to secure adequate pay for our work, to furnish aid in cases of death or permanent disability, and by legal and proper means to elevate the moral, intellectual, and social conditions of all our members, and to improve the trade.

Our principles

Section 3. Resolved, That we as a body thoroughly approve of the objects of the American Federation of Labor and pledge ourselves to give it our earnest and hearty support.

Union-made goods

Resolved, That members of this organization should make it a rule, when purchasing goods, to call for those which bear the trade-mark of organized labor, and when any individual, firm, or corporation shall strike a blow at labor organizations, they are earnestly requested to give that individual, firm, or corpora-
236 tion their careful consideration. No good union man can kiss the rod that whips him.

Labor legislation

Resolved, That it is of the greatest importance that members should vote intelligently, hence the members of this brotherhood shall strive to secure legislation in favor of those who produce the wealth of the country, and all discussions and resolutions in that direction shall be in order at any regular meeting, but party politics must be excluded.

Immigration

Resolved, That while we welcome to our shores all who come with the honest intention of becoming lawful citizens, we at the same time condemn the present system which allows the importation of destitute laborers, and we urge organized labor everywhere to endeavor to secure the enactment of more stringent immigration laws.

Faithful work

Resolved, That we hold it as a sacred principle that trade-union men, above all others, should set a good example as good and faithful workmen, performing their duties to their employers with honor to themselves and their organizations.

Shorter hours of labor

We hold a reduction of hours for a day's work increases the intelligence and happiness of the laborer, and also increases the demand for labor and the price of a day's work.

Miscellaneous

We recognize that the interests of all classes of labor are identical, regardless of occupation, nationality, religion, or color, for a wrong done to one is a wrong done to all.

We object to prison-contract labor, because it puts the criminal in competition with honorable labor for the purpose of cutting down wages, and also because it helps to overstock the labor marked.

Resolved, That we most earnestly condemn the practice in
237 vogue in many cities, but more especially in the West, of advertising fictitious building booms, as it has a tendency to demoralize the trade in such localities.

Resolved, That we recommend to all district councils under the jurisdiction of this united brotherhood, and to all local unions in localities where more than one local union, but no district council exists, to establish and maintain an employment office that will afford the employer the opportunity to apply to for help and our members to apply to when in search of work.

* * * * * * *

Jurisdiction

Section 6. The jurisdiction of the United Brotherhood of Carpenters and Joiners of America shall include all branches of the carpenter and joiner trade. In it shall be vested the power to establish and charter subordinate local and auxiliary unions, district, State, and provincial councils in all branches of the trade, and all other skilled employes working at the industry, and its mandates must be observed and obeyed at all times.

The right is reserved to the united brotherhood to regulate and determine all matters pertaining to fellowship in its various branches and kindred trades.

To subordinate local or auxiliary unions, district, State, and provincial councils the right is conceded to make all necessary laws for locals and district, State, and provincial councils which do not conflict with the laws of the international body.

In cases where local central bodies are formed local or auxiliary unions, district, State, and provincial councils shall have power to enforce the laws of such bodies, provided such laws do not conflict with the laws of the United Brotherhood of Carpenters and Joiners of America.

The right is reserved to establish jurisdiction over any local or auxiliary unions, district, State, or provincial councils whose affairs

are conducted in such a manner as to be a menace to the welfare of the international body.

The united brotherhood shall enact and enforce laws for its government and that of subordinate locals and auxiliary unions and district, State, and provincial councils and members thereof.

238 Trade autonomy

Section 7. The trade autonomy of the United Brotherhood of Carpenters and Joiners of America consists of the milling, fashioning, joining, assembling, erecting, fastening, or dismantling of all material of wood, hollow metal or fiber, or of products composed in part of wood, hollow metal or fiber, the laying of all cork and compo, all asbestos asphalt shingles, the erecting and dismantling of machinery and the manufacturing of all wood materials, where the skill, knowledge, and training of a carpenter are required, either through the operation of machine or hand tools.

First general vice president

His duties shall be to devote all his time to the united brotherhood, with headquarters at the general office. He shall have power to examine, approve, or disapprove all local union, district council, State council, or provincial council laws. He shall have charge of and issue the label and keep a record of same in accordance with the constitution and laws of the united brotherhood. He shall keep a record of all union and nonunion shops, mills, and factories; also the number of men employed in all towns, cities, and States in said mills, shops, and factories, and their wages, hours, and conditions, and keep a record of same for the general office, local unions, district councils, State councils, provincial councils, organizers, deputies, and business agents, and perform such other duties as may be assigned to him by the general president. He shall submit a quarterly report to the general president for information of the general executive board, the same to be published in the official journal.

* * * * * * *

General laws

Jurisdiction of local unions

Section 25. Local unions where no district council exists shall have the power to make by-laws and trade rules for their government and the members of the united brotherhood working in their jurisdiction,

239 which shall in no way conflict with the constitution and laws of the united brotherhood, State council, or provincial council, and must be approved by the first general vice president before becoming law, and shall be filed with the first general vice president and general secretary; likewise all future amendments must be submitted and filed.

* * * * * * *

District councils shall have the power to make by-laws, working and trade rules for the government of the local unions and the membership of the united brotherhood working in their districts, which shall in no way conflict with the constitution and laws of the united brotherhood, State council, or provincial council, and must be adopted by referendum vote of the members and approved by the first general vice president before becoming law, and their representation shall be according to membership.

* * * * * * *

District councils shall have the power to enforce working and trade rules in their respective localities.

* * * * * * *

By-laws and trade rules for the government of the district council and local unions must be submitted by the district council to the local unions represented in said district, and must be adopted by a majority of members voting, at a special meeting called therefor, and shall in no way conflict with the constitution and laws of the united brotherhood.

Label

Section 59. The attached design of label shall be the official label of this united brotherhood:

Issued by authority of
Labor Omnia Vincit.
United Brotherhood of Carpenters and Joiners of America.
Union Made.
Organized 1881. Registered 1900.

The general office shall, as soon as possible, through the good offices of some district council or local union in each State or Province, have the label registered. Registry to be in the name of the United Brotherhood of Carpenters and Joiners of America, and the expense to be borne by the general office. After such registry, each
240 district council, or local union where no district council exists, shall apply to the first general vice president for sanction to use the label and give such information pertaining to conditions in that district as he shall require, and after receiving sanction from the first general vice president, shall issue labels of the above design, with name or number of the district council or local union issuing same printed in its proper place on the label, to such shops and mills in that district as are entitled to same, and all labels must be secured from the general office, which shall furnish them at cost under the following conditions:

No agreement shall be made or renewed with any firm granting the use of the label after April 1, 1916, unless all shops and mills of the firm have an eight-hour workday and a minimum pay of not less than 35 cents per hour to all bench and machine hands, and employs only members of the united brotherhood, except where dispensation has been granted by the general president upon application from the district council or local union.

Each shop, mill, or factory shall have a shop steward; he shall have supervision over the label, stamp, or die; it shall be his duty to see that said label, stamp, or die shall not be placed on any manufactured article other than that which is made under the agreement. It shall be his duty to see that the agreement with the district council or local union with which he is affiliated is carried out in its entirety. The members employed in said shop, mill, or factory shall hold meetings at least once a month.

The shop steward shall be appointed at the regular monthly meeting for one month; the member working in said shop, mill, or factory longest shall serve first.

Under no circumstances shall an employer be permitted to handle labels or have them in charge, nor shall anyone but a member of the united brotherhood be permitted to attach them, and the shop steward shall at all times keep them securely locked up, so that no one else may have access. All labels shall be attached to finished product by members of the united brotherhood in such a manner that they can not be removed therefrom without destroying label.

* * * * * * *

In case of any violation of agreement or grievance
241 against an employer, the label shall be withdrawn when ordered by the first general vice president.

The first general vice president, with the sanction of the general executive board, shall have the power to order the withdrawal of the label from any factory, shop, or mill, upon charges duly made, and shall have power to regulate and investigate the issuance of the label in accordance with the constitution and laws of the united brotherhood.

It shall be the duty of all district councils, local unions, and each member to promote the use of trim and shop-made carpenter work, hotel, bank, bar, store, and office fixtures, and of church, school, household furniture, etc., and to make it generally known to the members of the local union that it is necessary to all mill and shop members and the united brotherhood that products made in factories, shops, or mills where only members of the united brotherhood are employed should be installed by fellow members.

Where owner or architect specifies that union materials shall be used on any job or building, none other shall be handled by the membership of our brotherhood, under penalty of suspension from the united brotherhood.

Union defendants, Exhibit 2, is a list of firms in Chicago and vicinity who use the label of the united brotherhood in the manufacture of sash, doors and interior finish, store and office fixtures, China closets, sideboards, consols, grills, arch openings, drain boards and coolers, and pianos and organs.

It gives a list of the names and addresses of approximately eighty (80) firms who are engaged in the manufacture of sash, doors, and interior finish in Chicago.

Also a similar list of firms engaged in the manufacture of china closets and sideboards.

Also a similar list of pine and hardwood flooring mills, and a similar list of manufacturers of stairs.

Union defendants, Exhibit 3, is a booklet containing the names of all firms in the United States having the use of the united brotherhood label on June 15, 1918.

The list shows a total of approximately one thousand and forty (1,040), of whom approximately two hundred and forty (240) are located in the State of Illinois; approximately ten (10) in the State of Iowa, and approximately five (5) in the State of Kentucky,
242 and approximately two (2) in the State of Michigan, and approximately thirty (30) in the State of Missouri, and approximately twenty (20) in the State of Ohio.

Motion to strike and order overruling same

Now, at the close of the Government's case in the above-entitled cause, come the defendants—William F. Brims, F. C. Bromley, Thomas Church, Joseph Dusek, Joseph B. Fox, Thomas F. Flynn, Harry Jensen, John Loris, Stanley Muszalski, Daniel J. Ryan, Anton Sommers, James Smith, Joseph Veltman, William G. Schardt, William C. White, and B. J. G. Wittman—by their attorneys, Hope Thompson, and move the court to strike out the following described evidence heretofore offered herein by the Government, for the reason that same is incompetent, immaterial, and irrelevant as to said defendants, inasmuch as the Government has wholly failed to show that the said defendants or either of them were participants in the conspiracy charged in the said indictment, and for other reasons:

1. Government's Exhibit 1, being minutes of a meeting of Division G on March 5th, 1918.

2. Government's Exhibit 2, being a letter dated March 22nd, 1918, addressed to the members of Division G and signed by E. E. Hooper.

3. Government's Exhibit 3, being another letter dated March 29th, 1918, addressed to the members of Division G, signed by E. E. Hooper.

4. Government's Exhibit 4, being minutes of meeting of Millmen's Association of April 19th, 1918.

5. Government's Exhibit 6, being copy of letter dated April 22, 1918, addressed to members of Division G, and signed by E. E. Hooper.

6. Government's Exhibit 7, being letter dated May 9th, 1918, addressed to members of Division G, signed by E. E. Hooper.

7. Government's Exhibit 8, being letter from the California Manufacturing Company, addressed to Lumbermen's Association of Chicago, under date of May 14, 1918.

8. Government's Exhibit 9, being letter under date of May 10th, 1918, addressed to Lumbermen's Association of Chicago, from Riverdale Lumber Company.

243 9. Government's Exhibit 10, being letter dated May 13th, 1918, from the Commercial Sash & Door Company, addressed to Lumbermen's Association of Chicago, having attached thereto copy of letter addressed to defendant Brims.

10. Government's Exhibit 11, being letter dated March 8th, 1918, addressed to Lumbermen's Association, from Commercial Sash & Door Company.

11. Government's Exhibit 12, being carbon copy of letter dated August 21st, 1918, to Commercial Sash & Door Company from E. E. Hooper.

12. Government's Exhibit 13, being a letter from Commercial Sash & Door Company, dated August 23rd, 1918, addressed to Lumbermen's Association.

13. Government's Exhibit 14, being letter dated April 24th, 1918, addressed to Lumbermen's Association, from Hartman-Saunders Company.

14. Government's Exhibit 15, being letter dated April 24th, 1918, to E. E. Hooper, secretary, from Morris & Sons Company.

15. Government's Exhibit 16, being letter dated April 22nd, 1918, addressed to Division G and signed by E. E. Hooper, secretary.

16. Government's Exhibit 17, being letter dated May 15th, 1918, addressed to the labor committee, Division G, from Standard Sash & Door Company.

17. Government's Exhibit 18, being letter from Von Platen & Dick Company, by H. E. Traeger, secretary, addressed to Carpenters' District Council of Chicago, dated July 24th, 1918, with notation, "Copy to Lumbermen's."

18. Government's Exhibit 19, being minutes of the Lumbermen's Association, Division G, of May 13th, 1918.

19. Government's Exhibit 20, being minutes of the Lumbermen's Association, Division G, of May 21st, 1918.

20. Government's Exhibit 21, being minutes of the Lumbermen's Association, Division G, of June 10th, 1918.

21. Government's Exhibit 22, being minutes of the Lumbermen's Association, Division G, of June 21st, 1918.

22. Government's Exhibit 23, being minutes of the Lumbermen's Association, Division G, of December 17th, 1918.

23. Government's Exhibit 24, being minutes of the Lumbermen's Association, Division G, of March 7th, 1918 (?).

244 24. Government's Exhibit 25, being minutes of the Lumbermen's Association, Division G, of March 18th, 1919.

25. Government's Exhibit 26, being minutes of the Lumbermen's Association, Division G, of April 15th, 1918.

26. Government's Exhibit 27, being copy of letter dated April 18th, 1919, signed by E. E. Hooper, and sent to members of Division G.

27. All evidence of E. E. Hooper, pertaining to negotiations for a trade discount between the Lumbermen's Association or mem-

bers thereof and the Carpenter Contractors' Association or members thereof.

28. All evidence of H. H. Cohlgraff, pertaining to negotiations for a trade discount between the Lumbermen's Association or members thereof and the Carpenter Contractors' Association or members thereof.

29. All evidence of L. G. Anderson, pertaining to negotiations for a trade discount between the Lumbermen's Association or members thereof and the Carpenter Contractor's Association or members thereof.

30. All evidence of L. H. Dodd, pertaining to negotiations for a trade discount between the Lumbermen's Association or members thereof and the Carpenter Contractor's Association or members thereof.

31. Government's Exhibit 30, being minutes of meeting of December 7, 1917, of the Carpenter Contractors' Association.

32. Government's Exhibit 31, being minutes of meeting of January 9th, 1918, of Carpenter Contractors' Association.

33. Government's Exhibit 32, being minutes of meeting of February 13th, 1918, of Carpenter Contractors' Association.

34. Government's Exhibit 33, being minutes of meeting of March 13th, 1918, of Carpenter Contractors' Association.

35. Government's Exhibit 34, being minutes of meeting of April 10th, 1918, of Carpenter Contractors' Association.

36. Government's Exhibit 36, being minutes of meeting of March 27th, 1918, of Carpenter Contractors' Association.

37. Government's Exhibit 37, being minutes of meeting of May 8th, 1918, of Carpenter Contractors' Association.

245 38. Government's Exhibit 38, being minutes of meeting of October 9th, 1918, of Carpenter Contractors' Association.

39. Government's Exhibit 39, being minutes of meeting of January 8th, 1919, of Carpenter Contractors' Association.

40. Government's Exhibit 40, being minutes of meeting of March 12th, 1919, of Carpenter Contractors' Association.

41. Government's Exhibit 41, being minutes of meeting of May 14th, 1919, of Carpenter Contractors' Association.

42. Testimony of H. J. Cohlgraff as to statements made by members of the Carpenter Contractors' Association to the effect that the contractors did not want Article III to go into effect because it cut them off from purchasing outside material, and that they could get outside material cheaper, and that if Article III went into effect they could not buy.

43. Testimony of H. J. Cohlgraff to the effect that there were no carpenters in Chicago except union carpenters.

44. All of the evidence of the witness, Robert Pottinger, pertaining to the controversy he had with defendant Brims and others in connection with the installation in buildings in Chicago of material purchased from Anderson & Lind Manufacturing Company

in Chicago, and all evidence of Pottinger relative to the refusal of the carpenters' union to install, or to permit members of that union to install, nonunion made material purchased in Chicago.

45. All evidence of L. G. Anderson relating to conversations and discussions by members of Division G of the Lumbermen's Association, in the several meetings of that association.

46. All evidence of L. G. Anderson relating conversation between himself and Mr. Traeger, relative to Article III.

47. All evidence of L. G. Anderson relative to statements made to him by various prospective purchasers, giving reasons why they would not purchase material from the Anderson & Lind Manufacturing Company, and conversations connected with the giving of such reasons.

48. All evidence of L. G. Anderson giving the names of per-
246 sons and firms who declined to purchase from or to figure with Anderson & Lind Manufacturing Company.

49. All evidence of L. G. Anderson detailing conversations with Harry Jensen relative to investigation of so-called "graft."

50. All the evidence of L. G. Anderson, explaining his vote in the meeting of March 18th, 1918 in the Lumbermen's Association, Division G.

51. Government's Exhibit 65, being a letter from the Melrose Mill Company, dated December 13, 1918, addressed to Anderson & Lind Manufacturing Company, of Chicago.

52. All evidence of L. G. Anderson relating to Exhibit 65, and conversations in connection therewith with Mr. Haring.

53. All evidence of H. M. Anderson relating efforts to sell material for Anderson & Lind Manufacturing Company in Chicago, and giving reasons assigned by possible customers for not buying such material.

54. Evidence of A. H. Johnson relative to his attempts to sell material for Anderson & Lind Manufacturing Company in Chicago, and his evidence giving reasons assigned by possible customers for not buying such material.

55. Evidence of Walter E. Madson relative to conversations with Charles Wright, and to negotiations with him, and the payment to him of various sums of money. Also the testimony of Madson as to the acts of Charles Wright in placing the union label stamp on certain material.

56. Testimony of Joseph J. Miller relative to conversations and negotiations with Charles Wright and relative to payment of money to Charles Wright in connection with the installation of material purchased from Anderson & Lind Manufacturing Company in Chicago.

57. Testimony of C. H. Fisher relative to making arrangements to have certain material stamped with the union label, and evidence to the effect that his firm paid some unnamed business agent to get the goods stamped, and evidence relating to circumstances of drawing checks, and the supposed payment of this money to which un-

named business agent, in the sum of $298.00; also the evidence of Fisher to the effect that material was taken away from the job, stamped, and thereafter returned to the job.

247 58. Evidence of C. H. Fisher relative to manufacturing concerns located outside of the State of Illinois, with which he claimed to have done business.

59. Evidence of C. H. Fisher under cross-examination by Mr. Childs.

60. Evidence of C. H. Fisher relative to prices of material, as given under cross-examination by Mr. Fink.

61. Evidence of Edward J. Panos relative to alleged trouble he had in connection with installation of material purchased from Anderson & Lind Manufacturing Company in Chicago.

62. All evidence of Edward J. Panos relative to comparison of prices of millwork purchased in Chicago, and prices of millwork from concerns outside of Illinois.

63. All evidence of Edward J. Panos relative to material purchased by him in Chicago, and prices paid therefor.

64. All evidence of Thomas B. Harned relative to negotiations with William G. Schardt, and payment of money to Schardt.

65. All evidence of Robert Finnegan relative to the volume of business done in Chicago and vicinity by Paine Lumber Company, of Oshkosh, Wisconsin.

66. All evidence of Robert Finnegan relative to conversations with persons and firms to whom he endeavored to sell material in Chicago, and who are alleged to have assigned reasons for not purchasing the same.

67. Government's Exhibit 66, being purported tabulation showing sales in the Chicago district.

68. All evidence of Robert Finnegan relative to conversations which he had with Mr. Haring, of the Melrose Mill Co.

69. Evidence of Fred A. Johnson relative to sales of millwork in Chicago and vicinity by Morgan Sash & Door Co., of Chicago.

70. Evidence of Fred A. Johnson relative to conversations with persons and firms to whom he endeavored to sell material in Chicago, and who are alleged to have assigned reasons for not purchasing same.

71. The evidence of witness Paul Jensen relative to conversations with defendant Veltman, and relative to paying Veltman money, also evidence of Paul Jensen relative to paying fine levied against certain of his employe by the by the Carpenters' District Council; also evidence of Paul Jensen relative to any difficulty he had

248 in the installation of material purchased from Anderson & Lind Manufacturing Company in Chicago, Illinois.

72. Government's Exhibit 74, being minutes of the Carpenters' District Council for July 22nd, 1920.

73. All evidence of witness Heitman relative to conversations and statements made in his hearing in any and all of the meetings of Division G, Lumbermen's Association of Chicago.

74. Government's Exhibits 75 to 82, inclusive, being eight contracts executed by Hardwood Products Company and others.

75. All evidence of witness Heitman relating to conversations and statements made in his presence by defendant Beals.

76. Government's Exhibit 83, being a letter testified to by witness Heitman, and mailed out to members of Division G by E. E. Hooper.

HOPE THOMPSON,
Attorney for above-named defendants.

Which motion to strike said evidence was then and there overruled by the court, and exception to such ruling duly taken by counsel for said defendants.

Motion of defendants, Harry Jensen et al., for directed verdict and order overruling same

Now come the defendants, Harry Jensen, Joseph Dusek, John Loris, Joseph B. Fox, Stanley Muszalski, Anton Sommers, James Smith, B. J. G. Wittman, F. C. Bromley, Thomas Church, Thomas F. Flynn, Daniel J. Ryan, Joseph Veltman, William G. Schardt, William C. White, and William Brims, by Hope Thompson, their attorney, and at the close of the Government's case, move the court to instruct the jury to find said Harry Jensen, Joseph Dusek, John Loris, Joseph B. Fox, Stanley Muszalski, Anton Sommers, James Smith, B. J. G. Wittman, F. C. Bromley, Thomas Church, Thomas F. Flynn, Daniel J. Ryan, Joseph Veltman, William G. Schardt, William C. White, and William Brims, not guilty.

HOPE THOMPSON,
Attorney for said defendants.

Which said motion was then and there overruled by the court, to which ruling of the court the defendants by their counsel duly excepted.

249 *Motion to strike certain evidence and order overruling same*

Mr. FINK. I will now make my motion on behalf of the mill defendants.

(And thereupon at the end of the Government's case, the defendants by their counsel, moved the court in writing to exclude the evidence from the jury and presented their written motion to find the evidence in favor of the defendants, in words and figures following, to wit:)

Mr. FINK. Come now the defendants, described in the indictment herein as the Chicago Mills, together with their indicted officers, agents, and employees, and jointly and severally respectfully move the court as follows:

1. To strike from the record all evidence of conversations between the several witnesses who have testified for the Government herein and persons other than the mill defendants, their agents, officers, and

employees, and to strike from the evidence all statements not made in the presence of these moving defendants by persons other than themselves.

To strike from the evidence all the correspondence introduced by the Government between other than these moving defendants.

To strike from the evidence, all minutes of the meetings of the Carpenter Contractors' Association.

To strike from the evidence all minutes of the meetings of the joint arbitration board.

To strike from the evidence the minutes of the meetings of the Carpenters' District Council, because the prosecution has failed to show any combination, agreement or conspiracy between these moving defendants, the carpenter contractors and or the members of the United Brotherhood of Carpenters and Joiners of America.

And to strike from the evidence the testimony of the witnesses to the effect that they heard Rinn, Reynolds, and Morris speak in favor of article 3 at some meeting of Division G in the year 1918, because it appears from his cross-examination that his testimony upon the direct examination was a mere conclusion.

Motion overruled; exception on behalf of all defendants.

Mr. FINK. Now, the defendants described in the indictment herein as the Chicago Mills, together with their indicted officers, agents, and employees, and jointly and severally respectfully move the court as follows:

250 *Defendants motion for directed verdict and order overruling same*

To direct the jury to return the verdict of not guilty as to these moving defendants for the following reasons:

A

The prosecution has failed to introduce evidence to sustain the charges of the indictment in this, to wit:

No evidence has been introduced to sustain the allegation of the indictment that—

(1) The millmen offered to employ as such inside men, only the carpenters and joiners who were members of the United Brotherhood of Carpenters and Joiners of America, if such members of the United Brotherhood of Carpenters and Joiners of America would refuse to install any such building material as should be sold by the manufacturing concerns whose plants were located outside of the city of Chicago and outside of the State of Illinois.

(2) The above offer, alleged to have been made by the millmen, was accepted by the members of the United Brotherhood of Carpenters and Joiners of America.

(3) By reason of the foregoing offer and its acceptance, the manufacturing concerns whose plants were located outside the State of

Illinois have been unable to sell in Chicago any appreciable quantity of their building material.

(4) The manufacturing concerns whose plants were located outside the State of Illinois have been unable to deliver in Chicago any appreciable quantity of their material.

(5) The manufacturing concerns whose plants were located outside of the State of Illinois have been unable to ship into Chicago any of their building material.

(6) The manufacturing concerns whose plants were located outside the State of Illinois have been compelled to forego carrying on their interstate trade and commerce, so far as the city of Chicago has been concerned.

(7) The said manufacturing defendants, throughout said period of time, have manufactured practically all of such building material manufactured in said city.

And let me make an observation in passing here: the records shows there are a hundred union mills situated around the city of Chicago and many of them precisely in the same location as these non-
251 union mills, and Mr. Hooper testified that many of them were strong shippers in Chicago and have been supplying the demand in Chicago.

(8) There was a purpose upon the part of the manufacturing defendants to monopolize the business of supplying building materials in the city of Chicago.

(9) There was a purpose upon the part of the manufacturing defendants to secure excessive prices for their own building materials.

(10) The conspiracy therein alleged has substantially, materially or unreasonably restrained interstate trade and commerce.

(11) There have not been enough carpenters and joiners in Chicago or otherwise obtainable, not belonging to the United Brotherhood of Carpenters and Joiners of America, to perform the work required of them.

(12) The people of the city of Chicago have been compelled, by the resulting scarcity of, or the exorbitant prices for, building material, to forego the building of a great number of houses and buildings required by them, to house the people and conduct the business of said city.

(13) There was an intent to restrain interstate trade and commerce.

B

To hold that the conduct of defendants, as established by the uncontradicted evidence, constitutes a violation of the penal provisions of the Sherman Act, would be in effect—

(1) To deprive defendants of their property without due process of law, within the prohibition of the fifth amendment to the Constitution of the United States, namely, of the right to make lawful contracts and agreements.

(2) To deny to defendants the guarantee of the sixth amendment to the Constitution of the United States, namely, of the right to make lawful contracts and agreements.

(3) To deny to defendants the guarantee of the thirteenth amendment to the Constitution of the United States, that neither slavery nor involuntary servitude shall exist within the United States.

252 Mr. McKINLEY. There was no conspiracy that the contractors entered into. They entered into the best contract they could get to keep building going on in the city of Chicago and as the result of the change, they found themselves indicted, so I would like to enter the motion and instruction at this time because there is no testimony against the contractors established in the record.

The COURT. I will deny it at this time.

Exception on behalf of all carpenter contractors defendants.

Mr. STREATOR. I am not going to cover any ground covered by anybody else or that probably will be covered. I am not going to argue the question as to whether there was any conspiracy here or whether the evidence, with all the inferences which may ultimately legitimately be drawn from it, shows whether there was any illegal agreement.

I am going to argue for the purpose of this argument, and assume for the purpose of this argument, that the court is satisfied that there was some illegal agreement between some of the defendants and that assumption of course can not bind anybody except my defendants, and the only purpose and proposition at law that I wish to bring to the court's attention is that if the evidence with all the inferences which may be drawn from it leaves any hypothesis which can be consistently explained with the innocence of these defendants, the court must adopt it and instruct the jury to find it not guilty.

* * * * * * *

The COURT. I will overrule the motion and refuse the instruction.

Exception on behalf of all the defendants.

The CFURT. Mr. Cattell, are you going to cover any new—

Mr. CATTELL. Yes, I am going to cover the Chicago & Riverdale case. Not on what the Government failed to show as to us, but what the Government did show as to us.

The COURT. What is your motion?

Mr. CATTELL. The same.

The COURT. Well, I will overrule it.

Exception on behalf of all the defendants.

Mr. DOBYNS. As a matter of law my motion which I have filed here is that there should be a verdict of not guilty against

253 both of these defendants (Hardwood Products Co. and Mr. Heitmann) and it should be granted and I also want to make a motion at this time that all of the evidence that has been introduced be stricken out as to the defendant Green of the Hardwood Products Co. on the ground that there is no connection.

The COURT. Both motions will be denied and exception.

Exception on behalf of all defendants.

Mr. BLOCK. As far as Mr. Wright is concerned, the evidence it seems to me is not sufficient to allow it to go to the jury. This is different from any ordinary crime or criminal case, as I understand, and the Government could have proceeded by an injunction to restrain any alleged conspiracy in restraint of trade or to dissolve the association. My proposition is that, in the first place, the evidence shows that some man by the name of Schall told Mr. Madson that work had been stopped and there is no clear evidence as to who stopped it or why it was stopped and he told him to see a certain man by the name of Wright. Mr. Madson says that he saw a man by the name of Wright and he don't identify him as to who he is, or what connection he had with any man on trial or any organization and he said he gave this man some money.

There is nothing in this case to show that the cost of the building erected by union labor was any more than the cost of the building erected by nonunion labor in Chicago at that time. There is nothing to show that the tenant public paid higher rental in buildings erected by nonunion labor than in buildings erected by union labor.

The COURT. I overrule the motion and you may reserve an exception.

Exception on behalf of all defendants.

The defendants introduced the following evidence:

WILLIAM BRIMS testified:

My name is William Brims; I reside at 5551 W. Congress Street, Chicago, and am a carpenter. I am a member of the United Brotherhood of Carpenters and Joiners of America and in 1918 was president of the Carpenters' District Council. I had been president of the council four years and until July 1, 1921. The duties of
254 the president of the council were to preside at all meetings of the council, to sign all official documents and to enforce all working rules and agreements, which include enforcing the conditions of the constitution and by laws of the organization. I recall the evidence which was put in by the Government relative to a meeting of the district council February 10, 1917, at which it is recorded that the organization committee made a report concerning conditions in the Chicago mills and made a recommendation in connection with that. That was previous to the time I was president of the council. I was then vice president and was present at the meeting, presiding at first part of it. I recall the reading of that report and that George Orris, one of the business agents for the millmen or inside carpenters made a statement talking to the report. We generally call the inside carpenters "mill men." The substance of what Mr. Orris said was that he had made a number of trips up to Oshkosh and visited a number of mills there and had had employment in some of them; he found that boys and girls were working there as low as 8 cents and pregnant women handling timbers and so forth.

I mean 8 cents an hour. I do not recall that he stated what the maximum wages were in those mills. He said he had visited mills all through Wisconsin, the Paine Lumber Company was alluded to most particularly. I believe the Gould Company was among them. I do not recall all of the companies mentioned; he mentioned quite a number of them.

The report was put to the council and the council made a motion that it be received, concurred in and that the general office be requested to send organizers into that territory to help organize the district. By general office I mean the general officers, the general president, vice president and all the executive board.

The general headquarters of the brotherhood were in Indianapolis, and the Chicago District Council had no jurisdiction over the Wisconsin organization work. The organizers sent into various parts of the country to organize mills were paid from the general office.

Q. And from what funds did the general office pay them, if you know?

Objection; objection overruled.

A. From the per capita tax of all members of the organization.

255 The COURT. In the United States?

A. In the United States.

I have seen the document marked "Government's Exhibit 5" before and recognized my signature on it. I also recognize the five signatures of the committee that drew this agreement for the inside carpenters. Mr. Wolff, Mr. B. J. G. Wittman, Mr. Anton Sommers, Mr. James Smith, Mr. Muszalski, and Mr. Joseph B. Fox made up this committee. I was not a member of the committee. As president of the Carpenters' District Council I had to sign all the official documents. I do not know of any position other than a member of this committee held by Mr. Wittman. He was working at his trade in the shops and this is also true of Mr. Sommers, Mr. Smith, Mr. Muszalski, and Mr. Fox. They were elected members of this committee by the members of the inside local union in July or the early part of August, 1917. I understood that the committee had had meetings before they met with their employers but I do not definitely know as to that. I did not attend any such meetings. This committee first met with the manufacturers early in December, 1917. I was there at the invitation of Mr. Wittman. The full committee went with me. We met at the Lumbermen's Exchange. We met a committee representing the manufacturers composed of Mr. Rinn, Mr. Reynolds, Mr. Morris, Mr. Olson, and Mr. Hooper. This was the Mr. Hooper who testified in this case.

I opened the proceedings by introducing the committee to the manufacturers. I said: "Gentleman, this is a committee of our inside men, who have come to present to you an agreement." Mr. Wittman, chairman of the committee, then presented two or three copies of the proposed agreement which had already been prepared to the manufacturers. I had looked it over. Mr. Rinn said: "It

is fitting that we meet again to discuss an agreement, as we have done in past years. Of course we are not ready at this time to give you an answer; we will have to take this back to our association and look the matter over, and we will arrange to have a meeting with you in the near future which we will notify you when we are ready."

That is all of importance that happened that day. I did not see any of the committee to discuss the subject with them between that time and the time we next met the employers. We next met
256 late in February, or early in the month of March, 1918; I am not sure of the date. I went with the committee at their request. Practically the same people were present as at the first meeting. I think there were one or two additional men on the manufacturers side, but I do not recall who they were. Mr. Hooper was there. Mr. Wittman said: "Gentlemen, we have come over to get your answer to our proposition." Mr. Rinn answered: "We have taken this matter up with our association. We can not see where we can give you the increase asked for at this time."

The old agreement called for 45c. per hour, eight and a half hour day, five hours on Saturday. The new proposition asked for 55c. for the first year, 60c. for the second year, and 65c. for the third year, with an eight-hour day and four hours on Saturday. I believe those were the only changes in that agreement. Mr. Rinn said: "We can not pay the increase you are asking; you know it is war time, the war is on, the Government have stopped the shipment of materials, some of us are practically at a stand still, others are without any money, it is almost impossible for us to do business." I think it was Mr. Sommers who answered: "We must get more money; the men are leaving the shops and going into other lines of employment; laborers on the street are receiving more money than we are; the cost of living has increased, according to Government reports, over 50 per cent; potatoes, tomatoes, all the foods that we eat have increased; our rent has gone up, our clothing is high, and if we can not get any more wages at this time, we, too, will have to leave the shops and go into some other line of occupation."

Mr. Rinn answered: "You need us and we need you; while it is true that times are hard now, we hope it won't always be thus." Mr. Johanson or Mr. Sommers said: "We also want an eight-hour day." Mr. Rinn said: "We knew that was coming, was saw the hand writing on the wall." I said: "Let us throw our cards on the table and see if we can not settle this thing to-day." Mr. Rinn said: "I would suggest that we retire and talk this matter over." They retired for about ten or fifteen minutes.

When they came back he said: "This is the best proposition we can make you, 50 cents for the first year, 55 cents for the second year, and 60 cents for the third year; we are not sure that
257 our association will even approve of that." I suggested that our committee retire and talk things over. When the committee went out I said to them: "Let us make them this proposition:

We can see that these men are up against it, on account of the times, and we can not afford to go on a strike; it is war time, it wouldn't be patriotic, it wouldn't be right; let us accept their proposition on wages, providing they give us double time for Saturday afternoon." The committee agreed to make that proposition. We went back and Mr. Wittman said: "If you will agree to give us double time for Saturday afternoon we will accept your proposition." Mr. Rinn said: "You go back to your association and recommend this; we will go back to our association and recommend it, and if it is carried, we then will sign up." That is about the substance of what was said that day. I do not pretend to say everything that was said.

Nothing was said about the outside carpenters' agreement. Previous to this time nothing had been said to me or in my hearing by the manufacturers or their representatives about the outside carpenters' agreement. Not a word was said at the inside meetings on the subject of article 3. I never at any time before or after this meeting discussed with the manufacturers or any of them, or anyone representing them, a proposition that the union would refuse to install out of State material. The manufacturers never either at these meetings or at any other time made a proposition to me or to my organization that they would hire only union men in their shops if the carpenters would refuse to install out of State material. I never heard that anything of that kind was suggested. The committee went back to the district council and submitted the inside agreement to it for its approval. The minutes of the Carpenters' District Council under date of March 9, 1918, shows—

"Millmen's arbitration board presented a proposed three-year agreement with their employers, with a wage scale of fifty cents the first year, fifty-five cents the second year, and sixty cents the third year, with an eight hour day and four hours on Saturday.

"Motion prevailed.

"Which will be adopted as read."

It was adopted at a regular meeting of the council on Saturday night; I presume that the date is right.

After it was voted on by the district council it was sent out
258 to a vote of the inside men for their approval. That report came into the district council as to the vote on the agreement on the last Saturday in March. The members of the inside local unions voted on that agreement. No outside carpenters voted and no inside carpenter voted on the outside agreement later on or at any time. They never vote on the outside agreement. I believe the report came in on March 30th, and that the minutes of the district council on that date show:

"The referendum vote cast on the adoption of the millmen's agreement resulted as follows: 1,044 in favor and 205 against."

The council ordered the secretary to have the agreement printed in book form and distributed among the manufacturers and the members whoever decided to get a copy. After the meeting I

called the inside committee who had formulated this agreement to come into my office and I asked them to sign two copies of it so that we could forward them to the manufacturers for their signature. After the six of us put our signature on Government's Exhibit 5, which is that inside agreement, there were no signatures of the material men on, the manufacturers, and there was none of this written matter at the top, it was blank. What we signed was simply a blank printed sheet without the date filled in or the title and without the signatures of the employers. That [referring to the Government Exhibit 5] is one of the two copies. I handed the two copies to Mr. Bromley, who was the business agent of the district council for the millmen, and I asked him to bring them over to the manufacturers on Monday, so that they could put their signatures on. I never knew on what date the employers signed that agreement and never saw the document again. It went into operation Monday, the first of April. So far as I knew then the matter was closed with us on the 30th of March, 1918, being fully executed by the carpenter's representatives and forwarded to the manufacturers for their signature. I do not know why the manufacturers delayed signing until the 18th of April, and did not know that they had not signed it before the 18th of April. None of the manufacturers ever told me why there was any delay in signing. I did not know that there had been any negotiations between the millmen manufacturers and the Carpenter Contractors' Association or their representative relative to a trade discount. The first time I
259 ever heard of that trade discount proposition was right here in this court in the trial of this case.

Previous to the trial of this case I never knew that the manufacturers communicated in any manner with the Carpenters Contractors' Association or any of their representatives relative to either of these agreements that we signed or to the outside agreements signed at that time. Nothing was ever said in any of our negotiations with the manufacturers at any time during 1916, 1917, 1918, 1919, 1920, and 1921 about interference with the shipping here of outside material. The word "outside material" or "out of State material" was never mentioned between us and the manufacturers. I think I would have known if it had been mentioned to any of the union men in my presence.

As finally signed, the agreement was printed by the secretary and treasurer. It was not my duty to have anything to do with it.

They were printed and distributed widely. The inside committee never had any meeting with the outside arbitration board. Turning to the outside agreement which has been put in evidence as Government's Exhibit 35 I recognize this as one of the original documents I signed with the contractors' association representative. The union had been making agreements for a good many years with the contractors. When the joint arbitration board met to talk a new agreement, we generally took the agreement we were then working on and started discussing section by section all the way through. As fast

as we O. K.'ed a section we passed on to the next. If we came to a section that we wanted any changes in and could not agree on it then we simply laid that to one side and went on to the next section and followed that course all the way down the line. After we had gone through the entire old agreement we was then working on we went back and took up the different sections that were in contention and argued them back and forth until we agreed or disagreed, whatever the case might be.

After the joint arbitration board agreed we had to take it back to our respective organizations for their approval. If they approved, we were ordered to sign. If either of them did not approve we had to go back and fight it over again, try to come to an agreement that would be satisfactory. Article 3 in the old agreement read:

260 "There shall be no restriction upon any manufactured material, except prison-made." That was not acceptable to the union. It was foreign to the policies of our organization.

Efforts had been made to eliminate article 3, which the union wanted eliminated entirely. It did not want to be bound by a contract to do things that were foreign to the policy of our organization. The first time I remember meeting with the contractors' representatives in relation with the new agreement of 1918 was in December, 1917. Mr. Doyle, president of the arbitration board, said the contractors were not ready to discuss the agreement at that time and asked that it be put off until the next month. We next took it up at the regular meeting in January. Again Mr. Doyle said they were not ready to take it up inasmuch as they had other grievances they wanted to talk over with the lumbermen. He didn't mention what these matters were and we did not ask him. I had no idea what kind of matters he was going to discuss with the mill or lumber men and I never knew.

We next took the agreement up for consideration the latter part of February or early in March. At the regular meeting in February we did not discuss it, at Mr. Doyle's suggestion, the full committee not being there.

I believe we took it up the latter part of February. We had several meetings in then. We had several meetings that were not reported in the minutes of the joint arbitration board. There were special meetings and secretary did not keep the minutes of them. We just got together and talked over the agreement. As changes from the old agreement we asked the elimination of section 3 of article 3, an increase of wages, some changes in the carpenter work description.

We asked for 87½c. per hour and had been getting 70 cents.

We asked for the entire elimination of section 3 of article 3. We agreed to the other parts of the agreements and these three things were left as some of the points of argument after we had gone through the agreement. The union wanted to eliminate section 3 of article 3 because it tied their hands. The membership all over the country were insisting it ought to be taken out of the agreement, especially in our district, because it tied our hands; kept us from

refusing to handle nonunion-made material, which they wanted to do because members of our own organization were manufac-
261 turing that material and by refusing to handle nonunion-made material we could create a demand for union made material, thereby building up our organization, and induce more manufacturers to hire or employ union men. By hiring and employing union men it would make a stronger organization, whereby we could improve the conditions of our trade and our membership; also for the having of collective bargaining. Never gave the matter of restraining interstate trade a thought.

In our negotiations with representatives of the contractors' association we agreed sometime in February with the arbitration board. I recall that the minutes of the Carpenters' District Council for February 23 show that the arbitration board of the outside carpenters presented a proposed three-year agreement with the carpenters' association with a wage scale of 80 cents per hour and a Saturday payday; that motion prevailed unanimously that the report be received and that the proposed agreement be referred to referendum vote of our members, returns of votes to be in our office on or before March 16th. We had reached an agreement with the joint arbitration board previous to February 23d. Article 3, section 3, had not been eliminated from the form agreed upon but it had been changed. The agreement read, "There shall be no prison-made material used." This untied our hands so far as nonunion material was concerned.

The agreement provided for wages at 80 cents per hour; the contractors objected to paying 87½ cents as demanded. They said if we would allow section 3 of article 3 to remain in the agreement as it was they would pay us 85 cents an hour. We said we would not accept it. We would rather have 80 cents an hour and change article 3. The contractors' association turned down that form of agreement. We met the contractors against two or three times and each time they told us that their association had turned the proposed agreement down on account of article 3 as it read in the proposed new agreement. They said they had voted it down twice.

About the first of April we had a meeting with the contractors' representatives. If the minutes show April 9th I would say it was probably that date. The representatives of the contractors' association reported to us that they had again turned down the proposed agreement. We said "This is going to be our last meet-
262 ing; if we do not do something now we won't have any more meetings." We had to agree on something. We argued it back and forth and tried to get some substitute that would be satisfactory to both sides of section 3, article 3.

At our meetings with the representatives of the manufactures when we were negotiating the inside agreement, nothing was said about the installation of nonunion-made material. There was nothing said between us and them, either at these meetings or at any

other time, about whether or not the union was going to install nonunion trim in this district.

At our meeting on April 9th with the general arbitration board we were all arguing about the form that article 3 should take. One suggested one form and another another form. Mr. Ryan, the secretary of the board, suggested one form. He suggested that he take the form as it was in New York, that they had it there for six or eight years and found it to work out very satisfactory to the organization and it just passed through the court and that the Supreme Court of New York had sustained it, and said it was a good thing for the unions. He said it had passed through the Supreme Court in New York and they decided it was all right; it was a good thing for the union and it had passed through the Supreme Court of the United States and they said it was all right. He had the form in front of him and it is the same as in the agreement; "that there shall be no restrictions against the use of any material except prison-made and nonunion-made." That is what Mr. Ryan proposed. It was not accepted in just that form, there was an addition added to it. Mr. Doyle, representing the contractors, proposed the additional clause which was in the following form: "This shall not apply to machine-made flooring, ceiling or ceiling partitions, planed lumber or hardware of any kind." Somebody took the matter out into some other room and had it typewritten and brought back to the committee. It was typewritten on a little slip which was pasted on the agreement that we had previously agreed upon; that is the slip [indicating]. The form upon which they voted was, "There shall be no prison-made material used." That was acceptable to the unions. We did not sign the agreement that day but met three or four days later and I believe we did sign it then. If the minutes show that it was signed on April 12th I
263 would say that was correct. In our negotiations with the contractors relative to this agreement nothing was said about the manufacturers of mill work. No one discussed what interest they might have in the elimination of article 3. I never heard any discussions in any of these meetings regarding trade discount to be given by material manufacturers to the contractors. Referring to the Government's evidence pertaining to the O. K. stamp and the minutes put in evidence by the Government showing that sometime in May, 1918, a committee from the manufacturers appeared before the arbitration board, I remember who three or four of that committee were. They were Mr. Ryan, Mr. Reynolds, Mr. Morris, with some others; I don't remember their names. One said they had a lot of manufactured material on hand that had been manufactured by others or their own men, and other that they had brought from other places and that there was no stamp of any kind upon it, and did not know what to do with it, and could not see any good reason for destroying it or throwing it away. We suggested from our side that a stamp with the approval of the carpenters district

council be got to stamp them goods so that union carpenters would install it.

That was acceptable to them and we did it. On the stamp was "O. K. Carpenters' District Council." There were some thirty-three stamps made, all told, and they were distributed to the different mills or jobs where this material was and handed by the business agent of the district to the steward who was the union representative in these shops and he took the stamp and stamped all the goods that were in the shops and then returned the stamp to the business agent. The stamps were then returned to us. The steward is the man elected by the employees of the different shops and is one of the members of the organization. The union employees in each job elect one of their own members as steward. His duties are to look after the interests of the men employed and if anyone gets hurt or sick to see that they are properly taken care of and notify the organization and the fellow's relatives if he knows where they are at and to keep the address of all the members employed, and report any violations of working rules and agreements to the organization. He has charge of the union label in the mills.

There was no discrimination made among the different union mills as to who should have the right to use the O. K. stamps. It
264 applied just the same whether the mill was a member of Division G or not. At that time there were quite a number of mills in Chicago manufacturing print, about 100 to 150. It applied no matter what material was made. There were about 300 union mills in the city or the State of Illinois at that time, and in the United States about 2,000.

During 1918, 1919, 1920, and 1921 the union carpenters in Chicago installed union-made trim without regard to where it was made. They installed trim from any one of these 2,000 mills. The union label was used to identify whether or not the material was made by union labor or members of our organization. When a carpenter came to install a piece of trim if he saw the union label on it he didn't know if it was made in Chicago or where. If it had the label he installed it; if it didn't have the label it was his duty as a member of the union to refuse it, without regard to where it came from.

The national organization agreement was that the organization would handle union-made material no matter where it came from. I did not state to Mr. L. G. Anderson, of Anderson & Lind Mfg. Co., that the union was not going to install union-made material if it was made in a community where the wages were lower than this. I never said anything of that kind at all. I never said to him in substance that if we could keep this cheap out-of-town stuff out of course it would help to make better prices for the Chicago mills and help the inside men to get better wages.

Shortly after we had signed up our agreement I said to Mr. Bromley: "Come on and we will go up and see the Anderson & Lind Mfg. Co. and probably we can get them to organize at this time."

We went up and met Mr. Anderson and we said: "You know that we have now signed up an agreement with your division of the mill men and you are a party to this agreement." He said he was not a party to it. I said: "You are a member of that association and that agreement covers all members of the association and we expect you now to organize your job in conformity with that agreement." Mr. Anderson answered: "We have been thinking about the matter, but we are not ready to do anything about that question. We have got a large amount of material on hand here that is not union-made; that would be a total loss to us if we did not use it." I said:

"I presume that you know that the agreements that have
265 been made for taking care of that material is all right." "I have heard of it."

"If you agree to organize your mill at this time and employ union men we will furnish you a stamp; we will furnish a stamp to you and the men that you have could stamp it just the same as we have done to all other mills who are in that position." He said something about article 3 not being in accord with his views and I said: "I don't know what you mean, Mr. Anderson. This section 3 of article 3 reads now in our new agreement, that our employees are absolutely free to refuse to handle nonunion-made material and it will be the policy of this district from now on to refuse to handle nonunion-made material whether it is from your shop or any other shop." That is all the talk I can remember. He didn't sign up at that time. We have had a good deal of litigation with that firm for many years. The firm of Nollau & Wolff became unionized sometime during the year 1918. I do not remember the exact date but it was after these agreements were both signed. Mr. White was the first one who had negotiations with Mr. Root. He reported to me that he had negotiations with Mr. Root. He reported to the district council and that was put in evidence by the Government. I went along with Mr. White shortly after that and had a talk with Mr. Root.

Mr. Root said he thought it was his duty to organize the mill and that he had always been in favor of it but up to that time he had had no say as to how the mill would be run. His uncle, Mr. Nollau, who had died shortly before that, was very much opposed to organizing the mill and would not consider it at all, and now he felt that the time had come to organize, and he wanted to organize providing his millmen would go into the organization voluntarily. Nothing was said in this conversation about article 3, either to Mr. Root or to anyone else connected with that company. I do not believe there was anything said about the outside carpenters' agreement. On Monday morning, the first of April, 1918, we began to sign up the mills who were not in the millmen's association, Division G, under the new working agreement. We handed a number of copies to each of the business agents and told them to go out into their districts and get all the signatures they possibly could. We had the agreement printed in long form and in booklet form, and left a blank at the top for the name of the party to sign and

266 blank at the bottom for the signature. I presume about two hundred signed separate from the millmen's association. I can not tell you the exact number that signed. I didn't handle the active part of that work, which was taken up by Mr. Bromley and his assistant.

All who signed continued to employ union men. There were something over one hundred besides the millmen's association and there were two other associations who signed—the cabinet makers' association and the wood workers' association. They seemed to run an independent organization. They manufactured practically the same kinds of material. The cabinet makers specialized in fixtures on cabinet work and the wood workers manufactured more of the high price office work, fixtures such as go in buildings like this. I know something of the unionizing of the Hard Wood Products Company of Neenah, Wisconsin, of which Mr. Beals was president, in 1919. Sometime during that year Mr. Traeger called me up on the phone and asked me to meet him at the Palmer House. We arranged for a meeting and I met Mr. Traeger on the date set and he introduced me to Mr. Beals. That was the first time I ever met Mr. Beals that I know of. Mr. Traeger said: "Mr. Beals is running a mill in Wisconsin and he wants to know whether the carpenters in this district will handle his material if he ships it into Chicago," I said: "We handle materials from any part of the country no matter where it comes from providing it has the union label. We are now handling stuff from the union mills all over the country." That is the substance of our conversation and all I can remember. Mr. Beals said: "My mill is not a union mill but I am figuring on having it unionized." I said: "That is outside of my district and I can not handle that end of it, but if you are sincere and desire to have your mill organized I will get in touch with our general office and I have no doubt they will send an organizer in there and try to organize your mill." He said he understood that there was an outside local union in his town. I called up the first general vice president, John Cosgrove, on the long-distance telephone and told him about my conversation and asked him to send somebody in there as I believed the time was ripe to organize this mill. I had no further conversation with Mr. Beals and that is all I know about the organization of the Hardwood Products Company.

267 In my negotiations with the contractors' association I was not influenced by the manufacturers of material in Chicago. All I had in mind was the benefit of the men I represented at the council and I was not interested as to whether the manufacturers wanted to do something or didn't want to do it. They had no influence on me whatsoever. I did not know of any influence they might have on the contractors who signed up with us. I had no ill feeling towards nonunion concerns generally nor towards the state manufacturers. I had no ill will towards the out of state

manufacturers. I was not seeking to confer any special favors or assistance upon Chicago manufacturers.

I knew nothing about certain charged acts of Charles Wright. I knew nothing of the acts of William Schardt nor of Joseph Veltman. I knew nothing about an unknown business agent referred to as "Mac," nor about any of the matters testified to concerning the payment of some money to an unknown business agent. The union never authorized nor did I on behalf of the union ever authorize either of these men to do either of the things charged against them.

Cross-examination by Mr. Fowler

The central body of our organization in Chicago is known as the district council, and that is composed of representatives of the local organizations. I am a member of the district council and was president of it for four years from the 1st of July, 1917, to the 1st of July, 1921.

I don't remember whether all the members of the inside committee were members of the district council at that time. Stanley Muszelski was a member but I do not remember whether he was at that time. Whitman, Sommers, Smith, Fox, Bromley, Dusek, and Loris have all been members at some time. Flynn, Schardt, White, Ryan, Veltman, Wright, Church, and Jensen were all members of the district at that time.

When the contract that was signed between the contractors' association and the union was submitted to the locals for a vote it did not have in it the last modification of article 3 which was made in April, 1918. The modification was made by the committee on arbitration, reported to the district council, and it was confirmed
268 and agreed to by the district council. I signed this agreement between the contractors' association and the union after the modification was put on there. All other members signed it after the modification was made. I think I understood exactly what that modification meant. It did not mean that thereafter the union men and the members of our organization would not work on nonunion made goods, but it meant that we were free to handle nothing but union made material if we saw fit. We put the agreement into force and that article into effect from the date of the starting of the agreement, June first, 1918. After June, 1918, I believe we refused to install nonunion-made trim. It was approved by the organization and observed by nearly all of its members. I do not know of anyone who did not observe it.

Q. I am talking about the manufacturers, the mill manufacturers. When you referred to millmen you say you refer to the laboring men on the inside of the mills. When I am speaking of a mill man I refer to the manufacturers as designated in the indictment?

A. Yes.

I know some of the members of the millmen's association. It was my understanding at that time that every single member of that

association was union with the exception of Anderson and Lind Manufacturing Company and Nollau and Wolff, and it is still my understanding. All the other mill men I have mentioned here in Chicago who were employing our people were union and working union labor.

It is not a fact that we refuse to work upon material of this character, manufactured in the city of Chicago, only in the case of Anderson & Lind. I do not know the name of the mills here. We didn't refuse to work on any material that bore the union label, and I do not know of any occasion when we refused to work on material of a single concern except Anderson and Lind. I wasn't handling any of it myself. I did hear of a member of our organization refusing to work on the material of a mill other than Anderson & Lind here in Chicago. I don't know the name of the mills who were furnishing nonunion-made material.

I knew by reputation that these Oshkosh mills were not organized. I do not know what percentage of the doors and sash were shipped into Chicago from the outside. I presume there was a large
269 percentage. I am a carpenter and was president of the district council and carpenters' association. I do not know that those carpenters install practically all of the material in Chicago. There is a lot of men installing goods that are not members of the organization. At that time we had about fourteen thousand outside men and thirty-five hundred inside men as members of the association. I have no idea how many carpenters there were in Chicago. I do not know that it was a fact that eighty or ninety per cent of the doors that were installed in Chicago at that time were shipped in here from mills outside of Illinois and I do not remember that the minutes of our meeting so show. I was familiar with the fact that some of the Oshkosh mills and mills in other points in Wisconsin, Iowa, and Michigan were nonunion. We were not driving at those mills. We were driving at nonunion mills. We were not driving at the mills manufacturing nonunion-made goods. We were trying to organize the men who were manufacturers for us. We were trying to organize all unorganized mills. And it was a national policy to organize mills in Wisconsin. I had nothing to do with the mills outside of this district. I had something to with the enforcement of article 3 as modified. I didn't know where the doors and windows shipped in here came from. The fact that they didn't have the union label didn't signify that they came from the outside. As a rule they were nonunion. I didn't know of my own knowledge where the material designated as inside trim came from, and I did not know when that article was put into effect the result of it would be to prevent the shipment into Chicago of this material from outside of Illinois. I didn't know that it was nonunion-made material. We knew that some of the mills at Oshkosh were not unionized. Our men were not supposed to work on that material. It was not our intention to prevent them from working on it. We passed it so that we could handle union-made material by members of our

organization. It was not our intention as long as that material came in, made by nonunion labor, not to work on it; we didn't care about it. We were free to handle it as we saw fit. I wasn't going to work on the material shipped in if it was nonunion. It was our purpose to keep the man from working on nonunion-made material. I can not name any of the mills in Oshkosh that were union. I can only name the mills outside of Chicago and in the State
270 of Illinois that were shipping goods of this character into Chicago at this time that were unionized from reports I received from the business agents. Matthews in Milwaukee was shipping goods into Chicago that was unionized. There was also a firm in Cincinnati; I do not recall the name. I was informed that the Paine Company were shipping goods into Chicago. I do not know whether they are large concerns, or whether they are the biggest concern of the kind in the world.

I didn't know that all of these mills up in Oshkosh and the other mills mentioned in this record were shipping goods in here. I never was in that part of the country. I do not know anything about it of my own personal knowledge. We were not driving at those Oshkosh mills with article 3 in mind.

There were two or three meetings of the arbitration board with Mr. Doyle, and these other representatives of the Contractors' Association. The recital in the minutes of the meeting of April 9, 1918, "he was informed by Mr. Brims that this will be our final meeting if the proposed agreement is again turned down by the association" meant just what it said that that would be our last meeting and we wouldn't meet with them again. We were going to refuse to consider it any farther and were going on independent of the association. We were not necessarily going to strike, probably it would be the policy of the organization to refuse to work on nonunion material.

We did not mean that to be a threat at Mr. Doyle. Mr. Ryan stated that the Supreme Court of New York had upheld the agreement in the form it was in in New York at that time in the case of Bossert vs. Dhuy. He said the Supreme Court of the Union States had recognized that provision, I believe it was in the case of Paine Lumber Company against Neal. He had a copy of what the Supreme Court held in a book that he had there and he read some items from it. I did not read it.

Mr. Doyle at the same meeting offered this amendment: "This shall not apply to machine-made flooring, ceiling, or machine made partition, timber or lumber, or hardware of any kind." As an addition to the first part of the section it meant just what it said, that it would not apply to these articles, and that we would go ahead and continue the work on machine-made floorings, ceiling, or ceiling partition, and plain lumber and timber, or hardware of
271 any kind, and that we would work on weatherboarding put on the outside of the house, and on the flooring, but it does not mean that we would not work on one of the running boards

along the floor. The word ceiling there and here is two different propositions entirely. Ceiling is a manufactured board. Flooring is manufactured and we would work on the flooring. A nonunion mill would work on the flooring and we would work on the floor.

Q. And here would be a nonunion mill making that base board and you would not work on that base board?

A. No, sir.

I don't know whether these millmen were manufacturing the flooring, nor as to whether they were manufacturing ceiling, ceiling partitions, or plain lumber. Our men had not told us that they were not. I don't suppose they were manufacturing hardware. It is not a fact that this section excluded the material manufactured by every body excepting millmen.

We had some meetings with these millmen looking to the making of the contract. We did not come to an agreement the first day. We did not have much talk each one said they would go back to their organization and then meet again, and then we met and talked a very few minutes and Mr. Rinn and his coworkers retired and we and ours retired. Then we came back and talked a few minutes and reached an agreement, which we reported back and both organizations adopted without any trouble at all. We compromised on the wages asked. The agreement was signed by the union men before it went into effect.

I had no knowledge whatever that the millmen were waiting for the signing of the contract between our people and the contractors before they signed. I never told Mr. Galvin anything to that effect. I am absolutely sure I never had a letter written to Mr. Duffy to that effect. I never heard it discussed or heard anyone say a word about it. I might have been presiding at a meeting when a letter of that kind from Mr. Duffy was read. I don't remember whether that kind of a letter was read. I heard most of the communications.

At the meeting had with Mr. Beals and Mr. Traeger I did not give Mr. Beals to understand that he could not ship his material in here; never mentioned that our men would not work on that material unless he was unionized. The question never came up. I do
272 not know whether he understood that if he unionized his mill and manufactured his lumber by union men that we would install his lumber. I told him that we would handle material if it was union made. Mr. Beals wanted to see me to find out whether we would handle material from the outside of the State if it were union made and I told him we would. The question as to whether we would not handle it unless it was union made never came up. He never asked me that question. In substance that was the whole conversation.

Mr. Beals didn't come to me; Mr. Traeger called me up. I presume that the only reason why Mr. Traeger brought Mr. Beals to me was to get that information. The fact that I was president of the district council here in Chicago might have had an effect on that reason.

We had a strike on Pottinger's job. Mr. Church, the business agent for that district, ordered it. I did not leave a note for Pottenger to that effect. Some of these business agents were working more directly under me than others. Mr. Church was a local union business agent and got a number of his orders from his local union. The work stopped on Pottinger's job because of nonunion window frames on the job.

Redirect examination by Mr. Thompson

None of the members of the carpenters' union were employed in manufacturing the flooring and ceiling excepted in article 3, and that is the reason we accepted that into the article.

Cross-examination by Mr. Dobyns

I had never seen Mr. Beals before I saw him in the Palmer House nor heard of him. I never heard his name discussed in the meetings of the council. I never heard of the Hardwood Products Company. All Mr. Beals asked was whether we would install his goods if it was union made, and I said we would. That we would install union-made goods from any place and that would apply to his the same as any other. I never saw Mr. Beals before or since until I saw him here in the court room.

273 Examination by Mr. Thompson

I don't remember whether the five inside committeemen, Muszalski, Smith, and the others, were members of the council at that time. They have all been members of the district council at different times.

Recross-examination by Mr. Fowler

There were some mills here in Chicago engaged in manufacturing floors. I don't know whether there are any now. There might have been one 1918, 1919, and 1920. At that time I think I remember him saying that he did not have anything and that they were not manufacturing anything at that time and that they were getting it outside. I don't know of any mills in Chicago at that time engaged in manufacturing ceiling and partition ceiling. There may have been some engaged in manufacturing hardware, but I don't know. I do not know whether they were unionized. It is foreign to our branch of the trade. I don't know where the ceiling and weatherboarding came from.

Cross-examination by Mr. Fink

In 1918 there were about fourteen thousand outside carpenters and about thirty-five hundred inside men who belonged to the union.

And in addition there were other journeymen carpenters who didn't. I do not know how many. I do not know whether our people declining to work on nonunion material would keep nonunion material out of Chicago or not. I do not recall the names of the mills at Oshkosh nor in Wisconsin that were union. I never was through that district. I might have read the name of Pugh & Rundlin at Ashland, Wisconsin, in the book which is printed by the organization and sent out to the different unions; that is the only way I can find out. I do not know Gross & Meagard at Kenosha, Wisconsin. I mention Matthews Brothers at Milwaukee. I never heard of Russell of Milwaukee or R. J. Rinsell, but I have heard of the Conway Company. They were union.

I mention a conversation on April 9th when article 3 was finally accepted in its new form and stated that Mr. Ryan mentioned
274 a certain case which had just been decided by the Supreme Court of New York. I would not be positive whether he said the Supreme Court or the Court of Appeals of New York, but it was my understanding that it was the highest court in the State of New York. I stated that he said that this very question had just been decided or had just been put up to the courts and that that court had decided that the union carpenters had a right to enforce article 3 in the manner in which it existed in the New York agreement. He read the decision from a book he had in front of him. It was a book on some decisions regarding labor. He read enough of the decision to convince me that he stated the conclusion of the decision correctly. I never had any doubts as to our right to do what we were proposing to do.

Objection by Mr. Fowler. Objection sustained. Exception.

I was influenced in my judgment by what was read to me in the case of Bossert vs. Dhuy.

Substantially the same thing was said by *by* Mr. Ryan concerning the case of Neal vs. The Paine Lumber Company in the Supreme Court of the United States.

The policy of the organization after June 1st, 1918, was to refuse to handle nonunion-made material, but we handled all the nonunion material which these manufacturers had bought or contracted for up to May 1st. We put the O. K. stamp on that for them for a year afterwards, so that they would not lose any engagements that they had entered into.

Cross-examination by Mr. McKinley

At the meeting on April 9, in which I told Doyle that that would be the final meeting unless they signed up—that was not just the language that I used and I might have pounded the table a little—I said: "If we don't come to an agreement to-day this is our last meeting; we are through." I meant that the negotiations were off between us and the contractors. Up to that time the contractor mem-

ber of the arbitration board had fought against signing an agreement with article 3 as it finally got in. They had fought against it in the first meeting and until the two committees agreed on it and brought it back to their association and it was turned down by their association. Even then they asked us not to change it,
275 the entire committee, including Doyle, Streusenreuter, and Werwein. I don't know whether Doyle, Scown, and Wehrwein understood that we meant that that would be our final meeting, but we intended that they should understand that we were through dealing with them if they didn't sign up. If they had not signed up we would have gone alone independent of the contractors' association and we would not have allowed men to work for contractors who didn't sign the agreement. We would have tried to get every contractor in town to sign the agreement independently. We would not necessarily have tried to disrupt the organization of contractors. They could sign up without coming away from the association. We would not recognize the contractors' association as a body but would sign up as individuals. This individual agreement would not be the same agreement that we were trying to get the contractors' association to sign up for section 3 of article 3 would be eliminated in its entirety. We have signed up agreements with independent contractors in previous years, and they were the same kind of agreements that the contractors' association had signed.

Doherty might have said that article 3 was too broad and that we could tie up the whole town on a lot of this stuff when they didn't know whether they were union made or not. Such as hardwood flooring and ceiling and ceiling partition and even screws and hardware, I don't remember specifically. That is saw mill stuff and very little of the planing is done here in Chicago.

My union or the Carpenters' District Council have been dealing with the contractors' association since 1901. There was a lockout in 1900 which lasted about thirteen months. As near as I can remember at that time there were two contractors' associations who after that entered in an agreement in which the eight cardinal principles were contained, number three of which was: "There shall be no restriction upon any manufactured goods except prison made." At the expiration of every agreement the union fought to have that clause eliminated. I don't know that we were in any stronger position in 1918; we simply went along the lines we had always done and insisted on having that eliminated.

At that time there were many journeymen carpenters leaving Chicago to work on Government work and cantonments and en-
276 campments and in the shipyards. We couldn't supply the demend on account of the journeymen contractors going into Government work. We had very little discussion on this agreement up to February, 1919, and after that we had four or five special meetings to the best of my recollection.

Recross-examination by Mr. Fowler

There was very little building going on in Chicago in 1918 and during the war.

Redirect examination by Mr. Thompson

I do not remember whether we sent a committee to New York for any purpose before we closed the negotiations with the contractors.

DAVID H. DOYLE testified on behalf of defendants.

Direct examination by Mr. McKinley

My name is David H. Doyle and I live at 5359 Kenmore Ave., Chicago. Have lived in Chicago 38 years. When I first came to Chicago I worked with my tools at the carpenter trade and went into the business for myself in 1893. I joined the carpenters' association in 1895 and was president of it 1918. During the years I was in business for myself I was general contractor and was an officer (as president) of the association in 1918. I am 71 years old.

Before I was president of the contractors' association I was director for two years, 1914 and 1915. In 1915 and 1916 I was vice president. The contractors' association had a constitution and by-laws. It is a corporation incorporated under the laws of the State of Illinois. This document which you hand me includes the constitution and by-laws of the contractors' association on page 82 and the following pages as it existed in 1918.

The constitution and by-laws admitted in evidence as contractors' Exhibit 1.

The preamble was read in evidence as follows: "We, the Contractors' Association of Chicago, do hereby form ourselves into
277 an association for the purpose of uniformity of action in regard to matters involving our mutual interests and adopt the following constitution and by-laws."

The following was read in evidence from page 85 of Exhibit 1:

"Duties of president:

"The president shall preside at all meetings and act as chairman of the board of arbitration.

"He shall appoint from members of the board of directors within ten days after the annual election the following standing committees which shall consist of three members each: Finance, membership, rules, printing and publication, extension, public action, and he shall also sign all vouchers approved by the finance committee, sign membership cards, and such other duties as may devolve upon his position and shall also be the custodian of the surety bond."

And the following:

"Vice president: The vice president, during the absence of the president, shall perform the duties incumbent upon the president."

Mr. McGimsie was vice president of the association in 1918. [Identifies Mr. McGimsie in the court room.] I think he presided

at one or two meetings. Sections 1 and 2 of article 2 are as follows:

"Any carpenter contractor who has been actually engaged in the carpenter-contractor business for a period of one year prior to date of his application may become a member of this association.

"Any person holding a membership in any trade-union shall not be eligible as a member of this association."

Sections 1 and 2 of article 5 are as follows:

"Board of arbitration:

"The board when so instructed by the association can formulate agreements or working rules which will be presented to the association for consideration, and when any agreement or working rules are adopted it shall be empowered to enforce the same.

"All differences, complaints, or grievances arising between members of this association shall be submitted to this board, who will call a meeting of members interested and hear evidence offered in the case and render its decision in writing to the association for final action."

278 All the agreements which were entered into by the association of labor unions provide for a board of arbitration, elected by the members. There were five members from the employers side and five from the union side. It provided the time when they should met. Section 4 of the agreement reads as follows:

"Both parties hereto agree that they will at their annual election each year select an arbitration committee to serve for one year, or until their successors are elected and qualified.

"In case of death, expulsion, removal, or disqualification of a member or members of the arbitration committee such vacancy shall be filled by the association or union at its next regular meeting."

This section had been in all agreements with the labor union. When we first organized we elected officers. In 1918 I was elected president, and Daniel Ryan was elected secretary of the arbitration board. At our first meeting we took up the agreement which was to expire and talked matters over as to how we would proceed. Nothing was done at the meeting in December, 1917. On January 3, 1918, when it appeared that there was a regular meeting of the arbitration board, in which Mr. Doyle stated that they were unable to get together with the mill and lumber people to settle some disputes. There had been several disputes. One dispute was that during eight or ten years the contractors had asked the millmen for a discount in their trade, the same as they got from other dealers that they bought supplies from, and the millmen could not give them that discount. At that time we had no other matters to take up with the lumber or mill people. At that meeting we were not interested in the questions as to whether the mill men were going to increase wages or not.

As a matter of custom the agreement with the outside men always provides for a higher rate of wages than the agreement for inside

men because they claim the inside men had steady work and were not delayed by weather while the outside men would stop work when it rained or snowed or the weather conditions were not favorable. The outside men did not get the same number of working days every year that the inside men obtained.

Q. Well, now, did this arbitration board, the employer's side of it, your side of it, did they have any relation with the millmen, or was that handled by another committee?

279 A. That was handled by the trade relations committee.

No members of the arbitration board, who are defendants in this case, were on the trade relations committee.

We never discussed in the arbitration board the matter of the trade discount. The employers were represented on the board by William Scown, Frank Doherty, A. C. Wehrwein, and Frank Stressenreuter. Mr. Scown came onto the committee when it was about half through, having been elected to fill the place of a man by the name of Anderson. I think he attended one meeting before the one at which we signed up. On March 14th we had a meeting; we had plenty of difficulty with the union over the agreement besides article 3. The working rules of the union and what constituted carpenter work were questions which came up. I could not say that the question as to what constituted carpenter work is settled yet.

We had a disagreement with them about wages. They demanded 87½c. an hour and I think we had been paying 70c. We finally agreed to pay 80c. I gathered that they would rather have article 3 than higher wages. They stated that they would sooner take 60c. an hour than to give up the rights they asked for in section 3.

Q. What happened in 1919?

A. They repudiated the agreement they had made.

Q. In respect to wages?

A. In respect to wages.

Mr. THOMPSON. Objection and motion to strike as a conclusion.

Answer stricken and objection sustained.

I attended a meeting of the mill owners' association, Division G, in June, 1918. Mr. Green also attended as a member of the Carpenter Contractors' Association. He was not a member of the trade relations committee nor of the arbitration board. He was an ex-officer and only had one official relation at that time. When the trade relations committee attended this meeting with the millmen there were two appointed from the floor of the membership and two from them, and Mr. Green was one of them. I attended that meeting.

I could not give you the name of those who were present at
280 the meeting of the mill owners. It was a committee meeting.

Mr. Reynolds was there, I think; Mr. Dick, Mr. Morris, Mr. Traeger, and, I think, Irvine. That was after the agreement was signed up and had gone into force and effect. I do not think I ever attended any other meeting at the millmen's association rooms. I don't think there were any other meetings there. The millmen had

had a meeting with the comimttee of the carpenter contractors. They met with the trade relations committees and the duty of that committee was to formulate, if possible, a working agreement as to the trade discount with the mill owners' association. We had a lot of argument and were a little in doubt as to some of the points. The millmen brought over an opinion by Elmer Adams, an attorney, whom I didn't know. I have heard of his reputation in the community and it was very good. He is considered one of the best lawyers in Chicago in matters relating to trade associations, particularly in the lumber and building industry. I personally never accepted any trade discount from the mill owners' association and I do not know of the contractors ever getting any discount from them. I never signed any agreement with them. In a way the trade discount had something to do with article 3.

Q. In what way?

A. The millmen in their argument and meetings——

Objection by Mr. Thompson on behalf of his clients because they were not present; objection overruled; exception.

The millmen made a claim that they were not able to pay a discount when we asked for one, because business had been so bad, and by getting this article 3 released they might be able to negotiate the discount on those mills. Article 3 and the agreement were signed up before this time. That was at the meeting in June. I do not know of any contractor who got a trade discount from them. I remained president of the contractors' association during the year 1918. I would consider article 3 a detriment to the contractor in Chicago, because at the time it was signed and during its operation the contractors had work on hand and had millwork bought at a low price that was not union made. The consequence was it cost them a little more money to get that stuff through. They had to negotiate new purchases for it.

281 About six hundred contractors belonged to the association at that time. Building conditions were bad in the spring and winter of 1918 in Chicago because there was a scarcity of men and the contractors could not get sufficient men to do their work. When Brims told me at the meeting of April 9th that that would be our final meeting I understood it to mean that the city would be tied up with strikes, that our organization would be disrupted, and that the building industry would be in a chaotic condition.

In a way that had an influence upon me in signing up the agreement. I came back and reported to our association the condition on the arbitration board at that time. That we could not come to an agreement because we were fighting to retain article 3 as it was. The arbitration board in and of itself had no power to formulate an agreement. They had to argue out the terms and then go back and report it to their association who either gave them power to sign or not to sign it. I reported it to our association three times; three times it was turned down, and we went back for further discussion. Our board did not offer to do anything which the minutes

do not show. We still stood on the ground of keeping article 3 as it was in the prior agreement. I explained to the association that efforts were being made by the union agents and officials to get article 3 changed. I told our association that the union members of the board had said they would rather take 60c. an hour and get article 3 changed than to take 87½c. an hour and have article 3 remain the way it was. We got tired of being sent back so often to argue this matter out with the union delegates when we could not get together, so we finally went in and made a last report and the association still wanted us to go back and argue the thing further. We said we would not go back and tendered our resignations to the board, they did not accept them. They ordered us to go ahead but we never had full power to act.

A legal opinion was brought in by Mr. Ryan, the secretary of the board, and in a way that influenced us. We thought by following that opinion we were going along in a lawful manner. When we signed the agreement we had no idea we were violating the Sherman Act. We had no idea that the signing of this agreement
282 would effect the flow of interstate commerce. I rather thought it would not stop goods from coming into the State. I have bought millwork during the forty years I was in the carpenter work from mills all over the city. I never had occasion to buy outside of the city.

I knew nothing of the Wisconsin mills or conditions up there. I heard of their sending goods in here, but that is about all. I never tried to buy direct from the Wisconsin mills and it was reported that I could not. I was just a medium contractor as compared with others belonging to the association.

Cross-examination by Mr. Fowler

I install a good many doors and sash that were shipped in here from outside, eighty or ninety per cent of the doors and sash that I installed were shipped in from outside of Illinois. Somewhere in the neighborhood of seventy-five, eighty, or ninety per cent of the doors and sash used in Chicago are shipped in from outside of the State of Illinois. A pretty large per cent of baseboards and other articles that are called interior or inside trim are shipped in from outside of the State of Illinois. I use some of them sometimes. I bought from the millmen here in Chicago and on one job I bought from a scalper. I did not buy from lumber yards. A good many of these millmen bought material, doors and sash especially, outside the State. Previous to 1918 the goods purchased outside the State did not have the union brand on them. I might say that most all of the mill owners here in Chicago buy stuff outside the State. At the time that this agreement went into effect a good many of them had large stocks of this stuff on hand and had made arrangements to have that branded. I cannot say of my own knowledge that after that shipment stopped and we could not get any from outside of the State.

There might have been much less. I think there was more manufactured here in the city after that went into effect. I could not say that they manufactured all of it, but they increased their factory capacity, and manufactured a much larger percentage. When they said that because of article three they had been benefited and might be able to pay a discount; they claimed that business would be better.

283 I heard this a half a dozen times. It was common talk, and was a part of the argument which they used in negotiations with millmen. I spoke to them. I thought we were entitled to this discount because they had been greatly benefited by Article III. We didn't care what the reason was so long as we got what was coming to us. If they got better prices they certainly could afford to give it. I could not say that I urged this on the millmen.

I believe it was stated that night that Mr. Rinn or Mr. Morris was more responsible for Article III than anyone else. It had been rumored that the labor committee of the millmen were more responsible for Article III than anybody else. It was common talk. I know that Nollau & Wolff were unionized about this time. That was a large concern which manufactured all of the materials itself. I don't know whether they bought anything outside or not. I think the Union Interior Trim Company, Mr. Reynolds' company, manufactured about everything they sold.

All negotiations between the mill men and the contractors were actually carried on by a trade relation committee from our organization. Through my office as president of the association I was ex officio member of the trade relation committee. I was present at the meeting when the committee went over to the millmen and at several meetings in our office. I was at several of the meetings between the trade relation committee and the committee for the millmen which had in hand the negotiation of this agreement between us. The committee from the millmen included Mr. Lockwood, Mr. Morris, Mr. Reynolds, Mr. Rinn, Mr. Dick, and Mr. Traeger, I don't know how many. I don't remember having anything to do with the labor committee. I was never present at a meeting of the labor committee and I do not know who the labor committee on the agreement were. This argument was used all the time at those meetings of those committees. Article III was mentioned several times during the entire course of negotiations. Article III had been voted down three times before it was finally adopted by our association. At the meeting of April 9, at which Article III, section 1, was taken up and read, and at which Mr. Ashbeck moved that we stand by a motion made at a previous meeting with reference to section 3 of Article III, when the chairman asked for a secret ballot, at which the result was 27 for and 41 against. By

284 secret ballot we mean that every fellow wrote on a piece of paper no or yes and put the paper into something and then the result was called. On the motion made and seconded in which we adopted section 3 in article 3 as read by a vote of 44

to 11, it was not my duty to vote and I did not recall who voted against it and who voted for it. The reason that we changed our votes on that occasion and voted just to the contrary of what we had voted for three times was that many of our contractors had quite an amount of work on hands and they anticipated the result of having the city tied up in a strike. They had already bought their material but if the men were out and would not put it up for them where were they at. Before this agreement was signed the committee said that they would see that an arrangement was made whereby the millmen and everybody that had bought material from outside might have it branded and used.

Cross-examination by Mr. Fink

I have no reason for shaping my testimony so as to secure a conviction in this case.

Q. You told your attorney your recollection of the fact before he put you on the stand, did you not?

Objection by Mr. McKinley; objection overruled; exception.

A. As near as I could remember the facts.

I think I told him the same thing I testified here yesterday. No one has told me that a recommendation would be made to the court for a light punishment for me in the event my testimony proved satisfactory to the Government and a conviction ensued. I have had a conference with Government officials or the prosecutors in this case since my indictment herein. I can not give you the dates. I had two conferences in the Federal Court Building with Mr. Clyne and Mr. Howe. I can not remember if there was anybody else. They wanted to get a statement of the case as near as I could give it just as it appears in the minutes. That was after I was indicated. The second conference occurred at the same place with Mr. Howe and Mr. Shale present. Another gentleman was there, I do not remember his name, and Mr. McKinley was present at both conferences. I have no reason for not mentioning him as being present at the first conference. The second con-
285 ference was about the same matter as the first, and I attended the second conference about seven or eight weeks ago.

I heard Mr. Hooper testify in this trial. In the testimony I gave yesterday on the trial in answer to a question by my own attorney I said: "That the trade discount did have something to do with Article III and that the millmen made a claim that they were not able to pay a discount when I asked for one because business was so bad, but by getting Article III released they might be able to negotiate the discount and in all of the negotiations I had with the millmen those meetings between the committees this same argument was used all the time during the entire course of negotiations." When the millmen spoke of getting Article III released I understood that they wished to stimulate their own business. I understood when

they said they thought they could negotiate the discount they meant through the improvement of their business, by making it pay so that they could give it. During 1917 we had more or less negotiations with reference to a trade discount. We have had that argument up for ten or twelve years past. I can not tell you when the first negotiations in 1917 were, nor how many different negotiations we had. I cannot tell you the names of those with whom we had negotiations in 1917. Sometimes such negotiations occurred in the street and sometimes in the association rooms. I spoke to Mr. Dick, of the firm of Von Platen and Dick, about the matter at his office when I was paying a bill. I could not tell you the date. I don't think there was anybody present. I asked if he could not give me the discount on my bill that I paid and he said that he could not. I don't know of anybody else with whom I spoke personally in the year 1917 with reference to the trade discount.

I had some negotiations with reference to securing a trade discount from the millmen for members of the contractors' association in 1918. These were not negotiations between committees of contractors' association and of the millmen's association, but there were negotiations between the two organizations with reference to a trade discount in 1918. I do not remember that I had any private negotiations during the year 1918 with members of the millmen's association with reference to a trade discount to be given by the millmen's association to members of the contractors' association. All negotiations that we had in 1918 were conducted between the com-
286 mittees. I have discussed the question of trade discount with members of the millmen's association outside of committee meeting, but I can not tell you with whom; I can not give you the names. I can not remember the conversation. It was informal. I can remember something that was said. I said that we had been asking for this for years and we thought we were entitled to it. I can't remember that I said anything else. He said that their business was so bad that they could not afford to give it. I remember nothing else. I had conversations with several, but I cannot tell you whom. This was all informal talk.

The conferences in 1919 were between the committee and the trade relations committee represented the Carpenter Contractors' Association in these discussions. I can not remember the names of all of the members of the committee. There were Mr. McCann, Mr. Hanson, and three others, whose names I do not remember. They are all down in our book. I can not tell you the names of the committee of the millmen's association. I think the name of the committee was both the trades relation committee and the labor committee. I don't remember who the members of the labor committee of the millmen's association were.

I do not remember any of the names of the members of the labor committee or the trade relations committee, but I do remember some of the names of the gentlemen with whom we negotiated. They

were Mr. Reynolds, Mr. Rinn, Mr. Morris, and Mr. Lockwood; that is all I can remember.

I think I attended four of these meetings in 1918 where the question of trade discount was discussed. I can not tell you the date of the first meeting, but I think it was in June, 1918, in the carpenter contractors' rooms, at 113 or 118 Washington Street, Chamber of Commerce Building. The second meeting occurred a week or two after the first at the same place. The third meeting occurred about three weeks after the first, and the fourth meeting somewhere in the first part of July. I attended one meeting which did not occur at the chamber of commerce. I think it was in the latter part of June. We attended this meeting at the Chamber of Commerce Exchange; not the same place. I can not give you the names of anybody who was present at the first meeting, nor the second meeting nor the third meeting nor the fourth meeting, nor the fifth meeting.

287 The first meeting occurred at two o'clock in the afternoon. The subject of a discount was taken up by all of the members that attended the meeting. If I remember right I stated that it was something that we had always looked for and were there at that meeting to see if we could not get it.

Other people at that meeting made remarks, but I can not give you their names. There was an argument of this discount for and against. I think there were about seven persons present, three of whom were for it and four against it. I think there were three from our association and four from the other. All the members of our association were for it and all the others from that association were against it generally but not in all particulars. I can not give you the names of these people. Those who were against it were not against it in all particulars. The millmen were willing to grant the discount but not to the satisfaction of the contractors. In the first place they wished to give three per cent and the contractors thought that was not sufficient. The argument went on from that and the argument of rates. The millmen only opposed the discount in the matter of the amount. No members of our association were opposed to discount.

In the meeting I think the millmen first suggested this discount. They had invited us to a meeting to discuss trade discount. The millmen requested the first meeting of these two committees for the purpose of discussing what they had always been arguing for. This occurred in June. There had been informal talks in January about it. I do not remember that it is a fact that the first meeting occurred in January. We did not reach any agreement at this first meeting as to whether or not a trade discount would be given, and I can not remember that anything was said at that meeting with reference to Article III. I have related everything that I can remember that was said at this first meeting by anybody, and I have no memoranda of any kind from which I can refresh my memory.

The second meeting occurred about a week after the first at the same place. I am not certain about the time. I don't remember how many were present. The same discussion occurred. A form had been drawn up between the meetings, but I cannot tell you what was said. I do not remember the proceedings of the meeting. I
288 remember that there was a discussion of a discount. The carpenter contractors wished to get a fair discount and the millmen wished to change the discount. Each side wanted it their own way. I have related everything that I can remember that was said at that second conference. I do not remember that anything was said about Article III. The third conference occurred about two weeks after the first one, which would be a week after the second had taken place, at the same place, and about the same time. About seven were present at the first conference, three from our association and four from the millmen's association, and the same was true concerning the third conference. At the third conference there had been a paper of articles drawn up. I do not remember anything said at the third conference different from what was said at the first two. I cannot remember what was said at the third conference. The fourth conference was held in a different place, the latter part of June. It occurred in the Lumbermen's Exchange in the evening. I do not know whether it was a committee meeting or not.

Mr. Reynolds, Mr. Rinn, Mr. Morris, Mr. Dick, and Mr. Lockwood were present at that meeting. That is about as many as I can remember. There were twenty-five or thirty all together. The same discussion was carried on, no difference from the discussion that had occurred at the other meetings. The members of the millmen's association who had not been on the committees were there. Something different was said by other men than what had been said at some of the prior meetings. The ordinary members of the millmen's association argued for and against it, and some were for it and some were against it. My Reynolds argued for it, also Mr. Traeger, Mr. Lockwood, and Mr. Morris. I can't remember anybody else who argued for it, and I do not know by name the men who argued against it. Mr. Reynolds said that they were willing to give a discount, and Mr. Traeger and Mr. Lockwood and Mr. Morris said the same thing and nothing else. I did not make a speech on that occasion. I made an argument of just a few words, stating that we were entitled to this discount for years but that we never got it; that we were trying to negotiate to get what we thought were our rights. That is all I said. That is everything that I can remember that was said on that occasion. Mr. Green said that the time had come when we should get that discount that we had been
289 looking for. Mr. Green made a speech and I can not remember the substance of the speech and give it to you. I can't remember anything else that Mr. Green said. I don't think there was anything said at this meeting about Article III. I have related

everything which I remember as having been said by anybody in this fourth meeting.

The fifth meeting occurred the first part of July, I could not tell you the date. In the Carpenters Contractors' Association about two o'clock in the afternoon, I remember that Mr. Reynolds and Mr. Morris were there. There were two or three others, but I can not remember their names. On our side Mr. McGinsie and I were present, and there were two others, but I can not remember their names. The conference lasted about an hour. The millmen stated that they had concluded arrangements for their discount. Mr. Reynolds made the statement but Mr. Morris said nothing, only acquiesced or agreed with what Mr. Reynolds said. I said that we agreed with what they said. I don't remember what Mr. McGinsie said. I have related everything that I can remember that was said at that conference and this was the last conference I attended. This all occurred in the year 1918. I think Mr. Rinn made the statement at some of these conferences that if he agreed to recommend the correction of certain trade abuses and discounts, we should agree to recommend changing Article III in accordance with Mr. Brim's then demands. I could not give you the date when this was said.

I do not think that I made the statement to Mr. Rinn in some of these meetings that I had any particular objection to a change in Article III when the matter had come up several times before our meeting and had been voted down by the other members of our association. Mr. Brims was demanding the elimination of article 3. He was demanding that Article III go into the new contract as follows:

"There shall be no prison-made material used."

That is what I and my associates on the joint arbitration board had agreed to. It is not a fact that I and my associates on the joint arbitration board had agreed to that before Mr. Rinn said a word about it. I can not tell you how long Mr. Rinn had mentioned this to us before we came to that agreement. I had no personal conference with Mr. Rinn. We did not accept Mr. Rinn's de-
290 mands that Article III be changed so as to read: "There shall be no prison-made material used." We could not agree to accept this. We fought against accepting it for months, and we never recommended its acceptance. We never agreed on a joint arbitration board that we would accept that or recommend it to our associations. It is a fact that Mr. Rinn stated that he wanted us to agree to the change so as to keep his industry open here in town. I can not answer the question as to whether or not it is a fact that that is the only reason that Mr. Rinn ever gave for ever wanting to consent to a change in Article III. I can not remember whether it is a fact that Mr. Rinn never said one word to me about wanting to shut out nonunion made material from this market. I can't remember that Mr. Reynolds or Mr. Morris ever said to me that they wanted to shut out nonunion-made material from this market. I understand what a man means when he says "I would like to have

nonunion-made material kept out of the Chicago market, so that I can make some money." Mr. Morris never made such a remark to me. I never heard Mr. Reynolds or Mr. Rinn make that remark individually. I have heard such a remark made by them in our public meetings when the committees got together and met at four or five meetings. I heard them say something like that on one of these occasions. I could not tell you who said it. It was common discussion. I don't remember the men's names who got up and spoke. I can not remember those things. I can not accuse any man personally.

I and my committee never agreed with Rinn and his committee to recommend to our associations to accept a change in Article III as Brims was then insisting upon it, if Rinn and his committee would agree to recommend to their associations the trade discount and correction of trade abuses we were seeking. There was something said with Mr. Rinn and his committee about it but we never entered into any such agreement. A written memoranda was made between us and the millmen and was signed by three or four of the millmen, I forget which.

Q. Now this agreement that you had with Rinn to accept a change in Article III, if he would recommend the trade discount, you did not keep that a secret, did you?

291 Objection by Mr. McKinley. Objection overruled. Exception.

The negotiations with Rinn and his committee were reported to the association. We told our association right along everything that was going on with Mr. Rinn and his committee. I would recognize this memorandum of agreement if I were to see one, and I think this one is a copy of the original.

Document offered in evidence.

Objection by Mr. Thompson and Mr. Dobyns.

The document was read in evidence as follows:

"The following propositions submitted by the Carpenter Contractors' Association to the Mill men's Association of Chicago have been approved by the mill men:

"(1) It is requested that the millmen will not submit estimates to owners for extra millwork while building is under charge of contractors.

"(2) To give all members of the Carpenters Contractors' Association on estimated prices a trade discount of 15% and to contractors who pay eighty-five per cent of the millwork as delivered on or before the 10th of each month a cash discount of five per cent.

"(3) Estimates given to all other parties to be regular estimated prices.

"(4) Carpenter Contractors' Association will discourage the purchase of any millwork from lumber dealers by their members.

"(5) In your agreement with the Carpenters' District Council, article 3 to read:

"'There shall be no prison-made material used.'

"(6) The elimination of all estimates in the selling of all mill work to any one cheaper than has originally been quoted to contractors.

"MILL MEN'S ASSOCIATION OF CHICAGO,
"EDWIN E. HOOPER,
Secretary.
"JOHN ALGOT OLSON,
"H. F. MORRIS,
"T. E. REYNOLDS,
"*Chairman of the Labor Committee.*"

Original of said document marked "Millmens Exhibit 1."

This document [referring to Millmens Exhibit 1] is the orig-
292 inal. I first saw this paper about June in the year 1918.

The fifth section of that document reads: "In your agreement with Carpenters' District Council, Article III to read; "There shall be no prison-made material used."

The word yous in that fifth paragraph means the Carpenter Contractors' Association, your agreement with the union. That means that in that the carpenters contractors agreed with the union that it is to read that way. I do not know anything about the millmens agreement with the union.

Q. If you did not see that provision, or if you did not see that document until June, how do you suppose that provision got in?

A. Well, I would say there was part left out there.

The nonunion part was left out but I cannot tell you why. It might be that we had reached an agreement with Mr. Rinn and his committee between the 5th and 13th of March, 1918, and that the agreement that we had reached was embodied in that document. I reported to my association just exactly what the agreement was that we had reached with Mr. Rinn and his committee at the time we made it. And this paper which I hold in my hand is the agreement which we reached.

I do not remember thata any of the doors and sash that we installed in Chicago were shipped from outside of the State of Illinois in the year 1918 or in the year 1917. I cannot answer the question as to what per cent of the doors and sash that were installed in Chicago's building operations in the year 1917 was shipped in from outside of the State of Illinois, but I should judge fifty to sixty per cent; it kept growing less.

During the years 1917, 1918, 1919, 1920, and 1921 I was general contractor, and in the year 1917 I put up $60,000.00 worth of buildings; in 1918, $50,000.00 worth; in 1919, $40,000.00 worth; and in 1920 and 1921, about $20,000.00 worth. I did not make any inquiries in the years 1917, 1918, 1919, 1920, or 1921 with reference to the amount of sash and doors which were shipped into Chicago from outside of the State of Illinois. I had heard rumors of what the figures were, but no one told me the exact figures nor did I read it anywhere. I could not tell you how many outside mills shipped material into Chicago during the years 1917 to 1921, inclusive. I do

not know what per cent of the material shipped into Chicago
293 during the year 1917 was union made and what per cent non-union made. I did not see any figures on the subject but heard several different parties say. I cannot give you their names; I don't know, men, talking business in a public room, I cannot tell you who the man is that said so and so, I cannot tell you that. It was over at the association in the chamber of commerce, and every man had a different amount of nonunion made material shipped into Chicago in 1921. One man said eighty per cent in the year 1917. I heard that about thirty or forty per cent of the sash and doors that were shipped into Chicago in 1921 for use in Chicago were non-union made. In 1917 I heard it was sixty to seventy-five per cent. And that is all I know about it. I do not know how many mills were in Indiana in 1918 and I am not posted as to whether there were twelve in Hammond, Gary, and Indiana Harbor alone. I do not know how many there were in Iowa, Kansas, Lowell, Michigan, Missouri, St. Paul, Ohio, Pennsylvania, Memphis, or Wisconsin. I knew there was some union mills shipping into Chicago. I never saw everything that came into Chicago and never saw any figures on the subject. For all I knew there may have been a hundred union mills shipping into Chicago in 1917. I can not say whether their goods bore the union label if they did ship it in. In answer to the question asked me yesterday, "Of course these goods that were purchased from outside the State of Illinois did not have the union brand on them, did they?" I said: "Not previous to 1918." Because lots of goods that came in at that time did not have the union stamp. After the change in Article III some of the local Chicago mills increased their capacity—Mr. Morris, Von Platen & Dicks, and I think the Union Interior. I could not say any more; there might be more.

Motion by Mr. Fink to strike from the testimony of the witness on direct examination the statement that about eighty or ninety per cent of the doors and sash that were installed in Chicago and shipped in here from outside of the State of Illinois, on the ground that upon cross-examination he shows very clearly that he does not know anything about it at all.

Objection overruled; exception.

Motion by Mr. Fink to strike from the testimony the state-
294 ment made on cross-examination that the goods that were purchased from outside the State of Illinois did not have the union label on them previous to 1918, on the ground that he has now admitted that he knew nothing about it at all.

Objection overruled; exception.

I do not know any mills other than Morris, Von Platen & Dick, and the Union Interior that increased their capacity after the change in Article III, but there might have been others. Mr. Morris told me that he had increased his capacity for making doors, but I could not tell you the extent nor could I tell you the extent of increase

of capacity by Von Platen & Dick and the Union Interior Company. I have been in Mr. Morris' mill since the change in Article III in 1918 about once. I think it das in 1919. I was also in Von Platen & Dick's Mill after the change in Article III about once a year. I was never in the Union Interior Finish Mills after the change in Article III. Mr. McGimsie told me that the Union Interior had increased its capacity. I don't remember that anyone else told me. Mr. McGimsie told me in 1919 down in our association room. I could not tell you who were present. Mr. McDonald, who is connected with Von Platen & Dick, told me they had increased the capacity of their mills. He said this in our association room, but I can not tell you who were present.

He said that they had increased their working force and their capacity, but I do not think he said how much.

I can not tell you who told me that Morris had increased the capacity of his mill, but it was mentioned up in our association rooms. I do not think it was anybody connected with the Morris mills. It was not said how much they had increased their capacity, but that they had increased their capacity for making doors.

When I testified yesterday that the factories manufactured that stuff here in Chicago, but that I could not say they manufactured all of it; that they manufactured a much larger percentage and increased their factory capacity, I referred entirely to those mills that I have named, Morris, Von Platen & Dick and the Union Interior. I remember General Fowler asking me yesterday: "Don't you remember all Mr. Green said that night saying that Mr. Rinn or Mr. Morris was more responsible for Article III than anybody else, but I could not say what my reply was just now. My
295 memory won't go back there and remember everything I said.

I can not remember the substance of my reply. I never heard it stated anywhere that Mr. Morris was more responsible for the change in Article III than anybody else, but I have heard it stated that the labor committee of the millmen were more responsible for Article 3 than anybody else. I heard it stated in our association room, but could not tell you the name of the person who made the statement. It was common talk. I heard it along about April, 1918. The reason why they were responsible was talked of.

Q. Well, what was the reason, what was it that was said?

A. On getting a raise of wages for the millmen, employees. That was one of the reasons assigned.

I did not think that the millmen were more responsible for the change in Article III than anybody else, but I did not deny the statements when they were made to me because I was a good listener. It may be a fact that the labor committee of the millmen had absolutely nothing to do with the change in Article III, but rumors said different. I did not know more about the change in Article III than anybody else in my association. I was chairman of our association and chairman of the joint arbitration board. I did not conduct all the negotiations with Mr. Brims and his committees

that were conducted. I presided at all meetings of the joint arbitration committee and heard most everything that was said on the subject. I knew no more about what was the real causes for the change in Article III than any of the rest of the members. I didn't know any more than Mr. Streusenreuter or Mr. Scown or Mr. Wehrwein or Mr. McGimsie; all these men knew as much as I did about it. I did not know that the millmen had absolutely nothing to do with it. It was my private opinion that they had something to do with it. I could not tell the jury in what way the millmen had anything to do with the change in Article III. I thought they had something to do with it, because it was connected with their business and it was the foundation of a raise in wages of their employees. I remember stating yesterday that there was an arrangement with the millmen and everybody that had bought material from the outside at this time for the material to be branded
296 and used before this agreement had gone into effect. That was a promise made by the union that they were to relieve them from loss by stamping this material that went through. I think that the promise was made before the agreement was signed, but I could not tell you who were present. I could not tell you what was said. When I said that the arrangement had been made before the agreement went into effect I meant the contractors' agreement with the union.

Our association had a finance committee. I can not give you their names, it was in our book. Our finance committee had nothing whatever to do with getting the union to O. K. or stamp nonunion-made material that was on hand, and I do not know of their ever making such a statement. I don't remember stating yesterday in answer to a question of General Fowler in regard to this matter that the finance committee said that they would take care of it.

I remember the meeting of the arbitration board, the minutes of which have been introduced by Government as their Exhibit 42, held on January 3, 1918, in which the minutes show that the question of a new agreement was taken up and discussed at some length, and Mr. Doyle stated that they were unable to get together with the mill and lumber people to settle some other disputes, but would have a meeting with them that week. I remember that statement. He referred to disputes about the deliveries of lumber and discount. There were many contractors when they let a contract to a lumber firm for their material, if it amounted to $1,000.00 when $1,000.00 worth of material was delivered to fill that contract on the same job, if it took more lumber to finish it, they increased the price on the surplus it took. There were lots of trade matters like this we were trying to settle. We had no other dispute with the lumber people with reference to delivery. There was a general discussion about the business.

As to the discount we wanted to get a better discount than what we had been getting. The lumber people were giving a trade discount and we were asking them to increase it. And the dispute

was a request on our part for increasing the trade discount they were giving us. I think the subject of discount was a dispute with the mill people.

297 We had other disputes with the mill people, just regulations of trade, delivery; to facilitate the business, our business of doing business with the millmen. There was no connection between the making of the outside agreement with the union carpenters and any dispute that we had with the lumber people. The connection which there was between the making of the outside agreement with the unions and any dispute which we had with the mill people was the granting an increase in the wage to their employees. The millmen were discussing the granting of an increase in wages to their employees under the agreement. We wished to understand thoroughly our position with regard to the millmen and any other agreements with their men before the discussion of the outside agreement. The outside agreement in some ways depended upon the inside agreement.

The union wanted to unionize some of those mills. They were all unionized but two in the city that belonged to the association, and they all wanted an increase in the wages of mill employees. The mill employees, as I understand it, had not been thoroughly under the jurisdiction of the district council previously. I think the amalgamation had been effected before this agreement, and the unions asked to change Article III in order to help the millmen and mill employees in the city. The unions asked us to help the mill employees. The union asked us to do that on the 1st or 2nd of May when the whole board was present; Mr. Wehrwein was not there. I can not individualize all these things. We agreed to change Article III to help the employees of the mill. That was said in a meeting of the joint arbitration committee, one of these first meetings.

Counsel called attention to Government Exhibit 31, purporting to be a memorandum concerning a meeting of January 9th, which showed a consideration of this subject, and then asked this question:

Q. So you had a meeting with the millmen association before June, had you not?

A. We might have had an informal committee meeting, not a regular meeting.

I remember the minutes which you have just read as follows:

298 "President Doyle stated that there was nothing definite to report on the new agreement; the committees are meeting from time to time.

"Mr. Ashbeck moved that the eight cardinal principles of article 3 of the present agreement should remain intact. Motion seconded."

I recall the meeting of February 7th of the joint arbitration board, at which meeting Government's Exhibit 43 shows the following:

"Present, Doyle, Stressenreuter, Wehrwein, Brims, White, Schardt, and Ryan.

"The proposed new agreement was taken up for consideration, and after some discussion Mr. Doyle requested that owing to the two

members, Mr. Doherty and Mr. Anderson, being absent, we should defer further action on the agreement until after the next meeting of his association, which was to be held on February 13th.

I remember making that statement. I could not tell you what else was said at this meeting. The next meeting of our association will be on February 13th. The only meetings I had with Mr. Brims prior to February 13th would be meetings of the board. I had no meeting with Mr. Brims between the 7th and 13th of February for the purpose of discussing the outside agreement, only just conversation. I do not remember at the meeting of our association Mr. McGimsie stated that there had been no meeting since he reported to the last meeting of the association (that is, with the millmen), but they expected to have another meeting sometime that week. He might have said that. The joint arbitration board had a meeting subsequent to February 7th but I do not remember the date. I understand what is meant in Government's Exhibit 55 having to do with a meeting of the district council on February 23rd where that exhibit shows the following:

"The arbitration board of the outside carpenters presented a proposed three-year agreement with the contractors' association, with a wage scale of eighty cents per hour, and a Saturday pay day. Motion prevailed unanimously, report to be received, and proposed agreement to be referred to referendum vote of our members, returns of the vote to be in this office on or before March 16th."

299 It appears from that minute that the arbitration committee had reached its agreement with Mr. Brims before February 3rd on the question of wages. I do not remember that Article III was included there. I do not know whether Mr. Brims sent Article III as agreed upon in the joint arbitration board in all his local unions for their ratification on February 23rd. On February 23rd we had not agreed to the change in Article III which Mr. Brims was demanding, to wit: "There shall be no prison-made material used." This was not prior to the time that the matter had been mentioned in our meetings with the committee of millmen. I think the question of the change of Article III had been mentioned in some of the meetings with the millmen before February 23rd. We had no formal meetings with them until June.

I could not tell the date of the next meeting of the carpenter contractors' association. I presided at a meeting on March 13th, the minutes of which were introduced by the Government as Government's Exhibit 33. I remember making the statement shown in the following paragraph of the minutes:

"President Doyle reported for the committee which had been appointed to meet the millmen's association. He read the proposition submitted to the millmen and stated the most of them had been approved by the millmen's committee, and thought that within two or three weeks they would be able to close this argument with the millmen."

The trade relations committee had been appointed with the millmen's association. I read the proposition submitted to the millmen. We had submitted the proposition embodied in this agreement. All but article 4 of the propositions that I read had been approved by the millmens; the fifth section had been approved by the millmen. I read millmen's Exhibit 1 to the meeting, as having been approved by the millmen and told them that the millmen had approved all of these propositions except the fourth article, and that I thought that within two or three weeks we would be able to close this agreement with the millmen. I thought it would take two or three weeks to close because in all our transactions of business with the millmen's committee I know it was put off for one cause or another; you never could tell when you would get to anything. I remember the following action shown in the minutes:

"The president stated that the new agreement would
300 be up for discussion by the members of the association, and that changes would be explained by the members of the arbitration board. Motion was made by Mr. Solomon that the changes of the old agreement should be read, after which the sections changed should be voted upon separately. Motion seconded by Mr. Green. The secretary read the changes in the agreement which comprised the following:"

Section 3 of article 3 was then read:

"Section 3 of article 3; Mr. Milord moved that article 3, section 3 of article 3, be adopted as amended."

It was amended with the addition—with the exception of lumber sheetings, nails, hardware, and so on, an amendment to the original. I know there had been an amendment on March 13th, but what the contents are, the exact words of the agreement, I cannot tell you without referring to it. It had been amended to read: "There will be no prison-made materials used." That had been agreed to in the joint arbitration board. We were now coming back from a joint arbitration board to give it to our association for their approval.

I know Mr. Brockob. I remember that Mr. Brockob asked Mr. Milord to amend his motion to read: "To adopt section 3, article 3, and hold in abeyance until we have an agreement with the millmen." I cannot give you the argument on the subject. I do not know what Brockob's private reasons were for wanting to hold their action as to whether or not they would accept article 3 of section 3 as amended until they got an agreement out of the millmen. He did not say what his reasons were, only they expected an agreement with the millmen. The agreement referred to is the one right here. It had not been consummated at that time. I remember that Mr. Doherty moved that article 3 of section 3 be adopted as amended; that the motion was seconded by Mr. Green and was lost by a vote of 35 for and 44 against. The association did not refuse to accept article 3 in its changed form as provided for in that agreement but finally did tell us to go back and accept it. They refused to accept it on March 13th. I remember that Mr. Ashbeck moved that Article III of sec-

tion 3 be recommended to our association to go into the new agreement as in the old agreement and that Mr. McCumber seconded the motion and the motion was carried. Notwithstanding the fact that at the time we had that agreement in our hands from the millmen offering to give us the trade discount if we would accept the proposition of Mr. Brims's change in article 3 of our association turned it down at that time. I do not know the date of our next meeting with Mr. Brims. March 14th the new agreement had been fully agreed upon by the arbitration board, as shown by the minutes of the meeting in the record of this case as Government's Exhibit 44. At that time we had agreed to this change in article 3, as stated by Brims in the arbitration board. In agreeing to this change as then demanded by Mr. Brims that article 3 read: "There shall be no prison-made material used," I and my associates Mr. Scown, Mr. Doherty, Mr. Wehrwein, and Mr. Stressenreuter were not influenced by the promise of the millmen's committee that they would recommend to their association the trade discount we were seeking if we would agree to the change in article 3 as sought by Brims. We agreed to that because we knew we had to agree to it.

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The minutes of the meeting of March 14th reading: "The request of the contractors to change section 3 of article 3 to read as it now stands in the old agreement was taken up but as the proposed change in this article has been voted on as a whole by the carpenters and carried, we were unable to change any part of the same now," are correct. We always fought to have article 3 put in its original form as it existed in the old agreement. The promise from Mr. Rinn's committee if we would accept the change he would make the recommendation for a trade discount to his men had an influence on us.

I remember the action on March 27, shown in Government Exhibit 36, reported in the minutes as follows:

"Reading of an agreement which had been agreed upon by a committee of the millmen's association and a like committee of the carpenter contractors' association, and after some discussion it was moved by Mr. Green that the agreement as drafted by the committee of the millmen's association and the carpenter contractors' association be accepted."

That was the agreement, which I hold in my hand, Exhibit 1. I think the motion was carried, but I do not know what the minutes show.

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I remember that the minutes show the following:

"After considerable discussion it was moved and seconded that the previous motion be laid on the table. Rising vote was called for by the Chair and the vote stood 68 for and three against."

I could not say what the reason was that caused this association to lay this proposition that had been agreed upon between our committee and Rinn's committee on the table by a vote of 68 for and 3 against on March 27th. I do not know the reason. The minutes are correct which read:

"Move and seconded that we stand by our motion which was carrier at a previous meeting with reference to section 3 of article 3. On rising vote it stood 47 for and 25 against."

The association again on March 27 refused to accept the proposition just as the minutes show.

I remember saying a part of what is shown in the minutes of a meeting of the joint arbitration board on April 9th:

"The Chair reported that the contractors had taken up the proposed agreement at their last meeting and voted against the adoption of the same on account of section of article 3. He also stated that this will be our final meeting on this agreement, but hopes something might be brought about to make the agreement satisfactory to all concerned."

I remember that I was informed by Mr. Brims that this would be our final meeting if the proposed agreement were turned down by the association. We agreed on the change with modifications until we got power from our association. We agreed on it mostly to avoid a tie-up. The getting of a trade discount from the millmen might have had some influence on it.

I remember the meeting on April 10th in which our association finally agreed to the change in article 3. The cause of our association finally agreeing to this change in article 3 was mainly to avoid a tie-up in the industry. The getting of the trade discount which Mr. Rinn's committee had said they would give us had an effect, but very little compared with the other. It has an effect on all of us. An opinion by Mr. Elmer Adams, an attorney, stating that all of the articles as drawn in the agreement, with the exception of
303 article 4, would come within the law, was read at the meeting of the contractors' association on May 8, as shown in Government Exhibit 37. I would recognize that opinion if I saw it. The agreement referred to is the same one that we have just discussed, millmen's Exhibit 1.

The paper which you hand me is a correct copy of the opinion, of which I read the original in the meeting.

Opinion received in evidence and marked "Millmen's Exhibit 2." It is dated May 4th, 1918, and reads as follows:

"UNION INTERIOR FINISH COMPANY,
"*531 LaSalle Street, Chicago, Illinois.*

"Attention Mr. Reynolds.

"MY DEAR MR. REYNOLDS: I have carefully examined the enclosed proposition submitted by the Carpenter Contractors' Association and the Millmen's Association of Chicago, and the first, second, third, and fifth and sixth items of said propositions, in my opinion, are legal, and are not in restraint of trade nor in contravention of any of the laws relating to unfair competition and monopolies. I am of the opinion that the propositions submitted if embraced in an agreement elimiting the fourth item would be for the mutual benefit

of the contractors' association and the millmen's association, and is legal and calculated to foster the business rather than destroy competition.

"Very truly yours,

"ELMER H. ADAMS."

I don't remember what the fourth proposition was; it is right there. You have read it correctly as follows: "The carpenter contractors will discourage the purchase of any millwork from lumber dealers by their members."

The next year, when the millmen came to adopt an agreement giving us a trade discount, that item was eliminated. The minutes show that a motion was made by Mr. Brockob and seconded by Mr. Solomon that the agreement be accepted as drawn with the exception of article 4. It is my recollection that the motion was carried.

Cross-examination by Mr. Thompson

I testified that at our meeting of the joint arbitration board the legal representatives of the union had a legal opinion, which they read and discussed and which somewhat influenced their deci-
304 sion. This document which you show me looks like the document which they had there and read at that time. I did not have it in my hands and read it, but in my judgment it is the same document.

Mr. Thompson offered said document in evidence as union defendants Exhibit 6.

Objection by Mr. Fowler on the ground that it is an opinion of the Court of Appeals of the State of New York.

The COURT. I will sustain the objection.

Thereafter the court permitted a further argument upon the motion after the jury had been excused. Before the argument was continued, Mr. Fink, on behalf of the millmen, moved that a juror be withdrawn and this jury discharged from further consideration of this case, and a new panel and a new jury be empanneled, on the ground that it now appears that one of the principal witnesses for the Government, and the only witness that the Government has produced to prove any of the allegations of the indictment, or to show any desire upon the part of the millmen, or any motive or any desire upon the part of the other contractor defendants, or any motive to secure a change in article 3 was one of the defendants in this case with whom the Government had had private conversations after the indictment and before the case was called for trial and whose attorneys sat with the counsel for the defense and participated in our peremptory challenges and in our counsels for the defense.

The COURT. I thought I was going to pass on this other motion first, Mr. Fink. Your motion may be made there, but I will want to pass on the admissibility of this testimony, and I will pass on yours afterwards.

The COURT. I thought I was going to pass on this other motion first. Your motion may be made there. I want to pass on the admissibility of this testimony first. I will pass on yours afterwards.

Mr. FINK. Very well.

Mr. THOMPSON. May it please the court——

The COURT. As I understand this question you are now urging, this is an opinion from the Court of Appeals in the State of New York, in a case that had been determined.

Mr. THOMPSON. Yes.

The COURT. And that case was cited as an authority excus-
305 ing or giving a reason for the action taken at one of those meetings. That is, in substance, that you now offer to show good faith on the part of your clients, or these defendants represented by you, in the action that they took; is that it?

Mr. THOMPSON. A little more than that, your Honor.

The COURT. Yes.

Mr. THOMPSON. Let me back up a little at the start.

The COURT. Yes.

Mr. THOMPSON. This witness and other Government witnesses have been asked about every scrap of paper that was used or read or referred to in their negotiations, both by the Government and by the other attorneys, and every such scrap of paper has been introduced in evidence, whether the defendants knew anything about it or not, if, as it was shown, they were referred to and discussed in those meetings. Not only that, but this witness has been asked questions as to what his private opinion was, and what was going on in his mind at the time, and whether he did a thing for this reason or that reason, none of which was asked by me nor any one representing my clients. Now, he has identified and testified that this document, call it what you please, was brought in there, read and discussed, and that it did influence his action. Now, I submit that if any document is ever competent in evidence, no matter what it is, the mere fact that it is an opinion of court is no different than if it had been an agreement or if it had been an opinion, or something, introduced by Attorney Adams. The point I make is that it was a document there that was read and used and that affected the determination in what they did. It is exactly as competent as any word that anybody uttered. I can't see where it would be competent to tell what he said any more than to tell what he read there.

The COURT. But you are asking to have this opinion, that is a decision, as I take it, a certified copy——

Mr. THOMPSON. It is a certified copy of the decision, and it shows on its face it was issued previous to that time.

The COURT. You are asking to have that admitted in evidence. It seems to me counsel could agree to this: That this opinion was there presented and considered by this meeting.

Mr. THOMPSON. He has testified to that already.

Mr. FOWLER. That is all he is entitled to.

306 The COURT. Just a minute. And that the witness states that he was influenced in his action, or the body, the meeting there was influenced in its action, in relying on this opinion.

Mr. FOWLER. That was asked of Mr. Brims and to that I didn't object.

The COURT. Isn't that sufficient?

Mr. THOMPSON. That is not sufficient for my purpose.

Mr. FOWLER. The whole purpose is to get it before the jury.

Mr. THOMPSON. I grant you that.

Mr. FOWLER. That is the very thing we insist he is not entitled to do.

Mr. THOMPSON. Let me read your Honor a citation.

The COURT. All right.

Mr. THOMPSON. Counsel has said that intent does not make any difference. Without conceding whether it does or not, everything that happened there is entitled to be before the jury as to what was done, and what was the real essence of the agreement. Now this is what the United States Supreme Court says:

"The legality of an agreement or regulation cannot be determined by so simple a test, as whether it restrains competition. Every agreement concerning trade, every regulation of trade, restrains. To bind, to restrain, is of their very essence. The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition, or whether it is such as may suppress or even destroy competition. To determine that question the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable. The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained, are all relevant facts. This is not because a good intention will save an otherwise objectionable regulation or the reverse; but because knowledge of intent may help the court to interpret facts and to predict consequences."

Now that is squarely in point, by a comparatively recent decision of the United States Supreme Court on the very question of the regulation of trade, and the Supreme Court has held time and again,

307 and I could cite plenty of cases if you wanted to take the time for it, where the purpose of the question at which the defendants were aiming is material, and the court will find case after case where the court has said, "Well, it may be true that this particular act was legal and that particular act was legal, as in the Swift case, but that the ultimate purpose, the thing they were really aiming at, was to restrain trade. You will also find cases where they say, well, it is true, this is a restraint, as in the Hopkins and Anderson cases, that it is true that this regulation affected trade to some extent, but the purpose was not there; the purpose was to protect and benefit their own affairs. I submit, your Honor, it is of prime importance for us to be able to show to this jury what was in the minds of these

men when they did that, what was their purpose, what documents did they consider in their meetings, what arguments they made, and I don't see how the court can exclude this, merely because it is a court opinion, when you would admit it without a question if it were some other kind of document.

Mr. FINK. If your Honor please, may I say a word on that, because I am interested in it, too, because I may introduce, or was planning to introduce, the same, and also the Pine Lumber Company vs. Neal, in the Supreme Court of the United States. Now the point is this: That it is a universal rule, without exception, so far as I know, that when the question of motive is involved, or the question of purpose is involved, and the witness testified that he was guided or induced to do a thing by reason of something else, that something else is admissible; it doesn't make any difference whether it is a court opinion or what he read in the newspaper, and it is for the jury to say whether the thing he says was the moving cause was sufficient to be a real moving cause. Now I don't care how much the Government insists that the question of criminal intent is not in issue in this case, I can only say that the Government is just simply wrong on that. The authorities which they will present to your Honor are the authorities in civil cases, and of course when the application is for an injunction it does not make a particular of difference what the conduct complained of is, whether it is with a guilty intent or not; if the conduct complained of in the bill for injunction is violative of the Sherman Act, it doesn't make any difference how good the motives are. But if you Honor please,
308 when you come to a criminal case the rule is exactly the opposite. It is one of the fundamental principles of criminal jurisprudence, without an exception, except in cases which are strictly and purely mala prohibita, that there can be any crime without the guilty criminal intent. Now, that is universal. And this is a criminal case in which the statute is not merely mala prohibita, but involves a corrupt agreement, and so on that point it is clearly admissible in my opinion.

Mr. FOWLER. Now, may it please the court, the gentleman simply does not know what he is talking about, so far as the Sherman Anti-Trust Act is concerned. The courts have time and time again held that the criminal feature, the criminal offense, is exactly the same as a civil offense in this kind of cases, and he is altogether wrong in saying that all the authorities I am going to present are civil cases. I will read what the court has said in three or four civil cases:

In Addyston Pipe & Steel Company vs. U. S., 175 U. S. 211, the Supreme Court said:

"It is useless for the defendants"——

Mr. THOMPSON. You needn't waste any time on that. I admit that is correct.

Mr. FOWLER. I am talking to the court. "It is useless for the defendants to say they did not intend to regulate or affect interstate commerce. They intended to make the very combination and agree-

ment which they in fact did make, and they must be held to have intended, if in such case intention is of the least importance, the necessary and direct result of their agreement."

So in the Patten case. That was a criminal case prosecution. the Patten case. Patten was indicted for running a corner:

"That there is no allegation of a specific intent to restrain such trade or commerce does not make against this conclusion, for, as is shown by prior decisions of the Supreme Court, the conspirators must be held to have intended the necessary and direct consequences of their act, and can not be heard to say the contrary. In other words, by purposely engaging in a conspiracy which necessarily and directly produces the result which the statute is designed to prevent, they are, in legal contemplation, chargeable with intending that result."

Now that was a criminal case, Brother Fink.

Mr. FINK. Are you speaking to me?

Mr. FOWLER. Yes.

309 Mr. FINK. That has absolutely no bearing on the subject.

Mr. FOWLER. That is just your remark. Then there is the case of the St. Louis Terminal Association.

"Of course, if the necessary result is materially to restrain trade between the States, the intent with which the thing was done is of no consequence; but when there is only a probability, the intent to produce the consequences may become important."

That is where the result has been sure and certain, as in this case. Now in Nash vs. U. S., 229 U. S. 373, which is another criminal case, Justice Holmes says:

"The law is full of instances when a man's fate depends upon his estimating rightly. That is, as the jury subsequently estimates it; that is, as a matter of degree. If his judgment is wrong, not only may he incur a fine or a short imprisonment, as here, but he may incur the penalty of death."

That is, he may intend to do right, but his judgment of what is right and wrong may be entirely wrong, and he may incur the penalty of death because of that wrong judgment. Now Mr. Thompson says that anything that shows the purpose of competent. I don't understand that this thing that is presented here has the least bearing on the question of purpose.

The COURT. Let me suggest this, gentlemen: Can't you stipulate that at this meeting in question this opinion was submitted and they acted with that in view?

Mr. FOWLER. That they had that in mind when they acted?

The COURT. Yes.

Mr. FOWLER. That has been proved, and I haven't objected.

Mr. THOMPSON. We don't have to stipulate that. That has been proved. I claim here is a document that was actually in their hands, and read and discussed, and that influenced their action.

The COURT. I see you haven't got what the court has in mind. I will sustain the objection.

Objection sustained. Exception on behalf of all defendants.

Mr. THOMPSON. It is my purpose to introduce evidence to show that the union, before this document was brought on here was
310 shown—that it bears on its face evidence of having been issued by the clerk of the Court of Appeals of New York, October first, 1917, and that the union sent a committee to New York to investigate the conditions there and find out about those acts and that there were a lot of cases involving the same matters as here. One in the Federal Court and several in the State courts and that the committee went there and conferred with the general counsel of the United Brotherhood of New York, Mr. Charles Beatty in court now, and they went there to ascertain what was the law decided there, because we hadn't had any decisions here in this State on the subject to find out whether labor conditions were substantially the same as here and in fact to get the opinion and everything and bring it back here, and in order that the Carpenters' District Council might use that opinion in negotiating their new agreement.

And that they did report back to the council and this very document was afterwards discussed by the district council as well as other acts there, and that they influenced their action all along the line in negotiating the new agreement.

All that in addition to what has been shown as to the document actually issued there.

The COURT. The objection will be sustained.

Exception on behalf of all defendants.

Mr. Thompson asked to have this document marked as "Union Defendants' Exhibit 6 for identification."

Mr. Fink then offered in evidence the cases of Bossert vs. Douhy, reported in 117 N. E. 582 and Paine Lumber Company vs. Neill, 244 U. S. 549, to contradict the statements made by the Assistant Attorney General in the presence of the jury with reference to those cases and to show what was actually before Mr. Brims meeting.

Objection. Objection sustained. Exception on behalf of all defendants.

Mr. Thompson, on behalf of the union defendants, then offered said decisions as being part of the report brought back by the committee from New York, sent there by the Carpenters' District Council and discussed in the Carpenters' District Council, and considered in part of the arbitration board in their discussions and negotiation.

Objection. Objection sustained. Exception on behalf of all defendants.

The same offer was then made by the contractors.

311 Objection. Objection sustained. Exception on behalf of all defendants.

By direction of the court Mr. Fink's motion to withdraw a juror was then read.

Motion overruled. Exception.

Jury returned to the jury box.

Redirect examination by Mr. McKinley

Millmen's Exhibit No. 1 was drawn in the Mill Men's Association in the Lumber Exchange and sent over to us. (The contractors' association.)

Mr. THOMPSON. I want to move, if the court please, on behalf of the union defendants whom I represent, to strike out the evidence of the witness Doyle as far as the union defendants are concerned, for the reason that that part of it in which he recites conversation at the meeting of the contractors' association, and meetings of the Mill Men's Association or of the several committees of those associations were in the absence of any of the union defendants, and he doesn't connect them in any way with any misconduct.

Motion overruled. Exception on behalf of union defendants.

GEO. P. RINN testified on behalf of mill men, defendants:

Direct examination by Mr. Fink

My name is Geo. P. Rinn; I am 53 years old and one of the defendants in this case.

I was born in Chicago and have lived here all my life. I was educated in the public schools of Chicago and took a position as a clerk in an insurance office at about sixteen years of age, and at eighteen I went into this mill work business with my father, and have been in that business ever since. I am a married man and have a son and daughter. I have been engaged in the mill business in Chicago for about thirty-five years. I operate as a corporation. The name of my concern is the Phillip Rinn Company, and that corporation is also one of the defendants in this case. The corporation was
312 organized in 1897, but prior to that time it was a private copartnership. The capitalization is $100,000.00, held at the present time 50 per cent by my brother and 50 per cent by myself. My brother's name is Walter J. Rinn.

The post-office address of our mill is 719 West Division Street. It is on the corner of Crosby and Division Street in the city of Chicago. In 1917 or 18 the capacity of our plant in annual production as measured in dollars was about $300,000.00 and when running at a maximum in both years we employed between 110 and 125 men. I should say that there are three or four mills in the city of Chicago that are larger than ours. I think the largest one in the city was the William Morris mill, which I should say had a capacity of $600,000.00 at that time. The Union Interior Finish Company had a capacity of about $450,000.00 to $500,000.00, and the Dick & Traeger Company had a capacity of perhaps $400,000.00 to $450,000.00. I think the Chicago Sash, Door & Blind Company had a greater capacity than we had, but not much, $350,000.00 to $400,000.00. And then there might be a half dozen that were approximately of the same capacity as our plant was. I think all of those I have mentioned are also defendants in this case.

I think that we consumed and manufactured in the year 1917 and 1918, as measured in dollars, was about $150,000.00 worth of raw material. That is just about half of the capacity of the sales. Measured in feet there would be about three million feet of lumber.

After the year 1917 and in the summer of 1918 we increased the capacity of our mill. We built a small addition, threw out some obsolete machinery and replaced it with modern machinery. The cost of the new equipment was between $30,000.00 and $35,000.00. We did not make these improvements on account of the change in Article III. We had had that in contemplation for some time prior to that. I heard Mr. Doyle's testimony yesterday with reference to the increase of the capacity of Mr. Reynold's mill—the Union Interior Finish Company. If they increased their capacity at all during the years 1918, 1919, and 1920, I never heard of it. I never heard of Dick & Traeger increasing their capacity. They were competitors of ours and we knew about what their business was. I think that the Morris mill did not increase their capacity in the years 1918, 1919, and 1920.

313 I should say there were somewhere between ninety and a hundred different concerns, individuals, partnerships and corporations engaged in the manufacture in the city of Chicago of doors, windows, and interior finish during the years 1917 and 1918. When Mr. Brims stated 150 I think he meant that they had that many concerns organized in Chicago under this inside agreement, but many of those manufactured things other than mill work. They might make refrigerators or musical instruments or any other things; possibly pianos. They were not simply mill work concerns. In 1917 I believe the membership of Division G of the Lumbermen's Association stood at 37, and the same in 1918. There were other associations to which corporations, firms, or individuals engaged in the mill business belonged in the city of Chicago in 1917 or 1918. There was an association known as the Wood Workers' Association of Chicago, made up of woodworkers employers, and there was another known as the Cabinet Manufacturers' Association of Chicago. I think there were some of the members of those two associations who were also members of the contractors' association. I did not belong to either of those associations. I do not think that any of the members of Division G of the Lumbermen's Association belonged to either of those associations. In 1917 and 1918 about seven or eight concerns belonged to the woodworkers' association. I would say there might have been twenty-five or thirty belonging to the Cabinet Manufacturers' Association.

Millwork is quite a general term. It is such articles of woodwork as are manufactured from rough lumber and which enter into the construction of a building although such things as flooring and weatherboarding, which I believe have been mentioned here, would not be classed as mill work. By mill work is meant that manufactured mill work which enters into the construction of the building. Different items are window frames and door frames that go into

the exterior walls of the structure; then the window sashes which go into those window frames, and then on the interior would be the door jambs and doors and trimming around those jambs. The baseboards along the walls, the chair rails possibly, and picture moulding, and wood cornices, if any, and china cabinets, and book
314 cases, and possibly paneled wainscoting in some cases. That covers substantially all mill work. If I did not say doors, I should have done so.

There is a recognized standard to some of these items. By standard or stock stuff we would first understand what we term regular sizes. That is to say, describing doors, standard or stock doors might be of a size beginning with a door two feet wide and six feet high and up to three feet wide and seven feet high and even more, and jumping in multiples of two inches in width and possibly less than that in height, but those would be standard sizes of doors. Aside from the standard stock sizes would enter in the element of design. A door of a standard size might not be a stock door, because the design would not be a stock design. Some of the stock manufacturers specialized on certain designs of doors in these standard sizes, but the moment that you got away from a standard design, although you might maintain the stock size it would no longer be a stock door. And the same thing generally would apply to the other items.

I would say that there were certain classes of stock which were not strictly called mill work or interior finish. When I said that all manufactured material manufactured out of rough wood work that entered into the construction of a building was mill work, I didn't mean by that that flooring such as is upon the floors was understood to be mill work, ceiling might not, sheathing if I might correct the term, ceiling is sheathing running up and down the wall for partition purposes and is not classed as mill work. Timber is not mill work and hardware of course is not mill work.

There was a time many years ago when machine made flooring or ceiling was classified as mill work and was manufactured here in Chicago in great quantities. I will explain the change to the jury. Many years back when most of the lumber that entered into this market was brought here from the lake ports of Michigan and Wisconsin principally. It came in vessels and rough from the saw mills. That particular stuff was almost exhausted from those sources of supply and now the lumber comes from much greater distances and almost entirely by rail. Therefore, the matter of freight has entered into the delivery cost very greatly. When this stuff came in here rough there was considerable business done here in Chicago in
315 what is known as planed mill work. We operated a planing mill for many years and did this work for the lumber yards, taking the rough lumber and running it into flooring or into ceiling or dressing their lumber and doing those things out of their rough lumber.

Now since the supply in the north is substantially exhausted and the lumber now has to come from some distance—from some distant

point, and almost entirely by rail, the matter of freight enters into it, and it is since then and has since then become the custom to make these things right at the points of manufacture. Flooring, ceiling, and dressing of lumber. The change has resulted in a great saving of freight. In our own business we used to get exclusively rough lumber. At the present time our lumber from distant points like far West points comes in already surfaced and instead of being two inches thick it is one and three-quarters inch thick and that is done for the saving of freight, and therefore it is done at the mill point, the saw mill point.

I know as a general thing that the employees of these saw mills where the machine-made flooring or ceiling or ceiling partition and planed lumber and timber are manufactured are not members of the United Brotherhood of Joiners and Carpenters. The percentage of mill work cost against the total cost of building construction is about six per cent.

I think that 1916 would be a normal year as to consumption. In that year there was about 6½ or seven million dollars' worth of mill work used in Chicago. 1917 was not a normal year of building in Chicago. I should say it was about fifty per cent or a little over fifty per cent, maybe fifty-five per cent. 1918 was poorer than 1917; I would say that that would not exceed one-third or possibly thirty per cent of a normal year. 1919 was much better but I do not believe that it reached normal. I would say that 1919 was possibly ninety per cent of the normal year, and 1920 was much better when you measure it in dollars. At least cost values had risen on all commodities. No; I am thinking faster than I should. 1920 was poor. It did not exceed sixty-five to seventy per cent of normal. 1921 was a better year. That ran over normal, 110 to 115 per cent. 1922 was a good one, 200%.

I should say that 75 per cent of the total mill work consumed in Chicago which was manufactured by the eighty-five to one
316 hundred concerns located in Chicago in the years 1917, 1918, 1919, 1920, and 1921. I think that percentage remained reasonably constant from 1917 to 1921, inclusive. I should say that about thirty per cent of the total mill work consumed in the city of Chicago would come under the definition of standard and stock as distinguished from special. Of that thirty per cent of standard stock two-thirds to three-quarters was manufactured by the eighty-five to one hundred concerns located in the city of Chicago, probably sixty-five per cent or so was made right here, and the balance came from everywhere outside, from other sources, both from union and nonunion mills. I do not believe the percentage of standard stock manufactured by both concerns varied appreciably from the year 1917 to 1921, inclusive.

Our company has been operating on the closed-shop principles for twenty-odd years I should say. I am acquainted with the other millmen who were indicted with me and their concerns had been operating under the closed-shop principles practically the same length of

time as ours. We adopted the closed-shop principles as a result of the unions demand and organization and the organizing of our employees. We resisted them from time to time but they were growing and their growing strength finally forced us to submit to them and we organized and became union shops. In the same manner and under the same circumstances that other manufacturers throughout the United States have adopted the closed-shop principles.

It has been all of twenty years since the question of open and closed shops has been a bone of contention between us and our employees. We conduct our negotiations with our employees as to wages and conditions of labor through the regularly appointed committee from the union and from the employers. These two committees formulate agreements and negotiate them, exactly in the manner indicated by Mr. Brims when he was on the stand. I think we have been entering into these joint agreements with Mr. Brims' organization something like fourteen or fifteen years, and prior to that time with another union. Up to 1918 there had been no determined effort for from fifteen to eighteen years to establish the open-shop principle in this business in the city of Chicago. We had regarded that as a closed issue. There was nothing to be gained by attempting to throw off the union and any effort to do so would have been useless.

317 So far as profits in our business is concerned, we had a loss in 1915, and it was practically an even break in 1916. In 1917 we had a small profit, about $900.00 to $1,000.00. In 1918 we had about $2,000.00; in 1919, $3,300.00; 1920 was the banner year, and we made approximately $45,000.00. In 1921 wasn't so good; we made only about $3,000.00.

In 1917 our invested capital was approximately $150,000.00, and with the added expenditure which we made in 1918 it ran up to about $18,000.00. The profit of $45,000.00 that we made in 1920 was made from the manuafcture and sale of millwork, but the conditions were such that it was so unusual that year that the opportunity was there to make the profits. The advances were so sharp from day to day almost that it was possible to sell your manufactured goods, which you were making out of raw material, that might have been bought the year prior at a cost of less than one half perhaps. Most of that profit came from the increase value in inventory. About eighty or ninety per cent of that $45,000.00 was really increased value of inventory.

By increased value of inventory I mean any material that one had on hand and had bought at lower market prices, and the value of that material had advanced during the time that we had it on hand and we were able to sell at an advanced price and make the difference; birch lumber, for instance, at the beginning of this period in the spring of 1918 was running along at a price of about fifty-five to sixty dollars a thousand and it began to advance in 1919, and in the early part of 1920 the advances were sharp until it reached the peak in the midsummer of 1920 at $240.00 a thousand as against $60.00

two years before. We had some of that stuff on hand at the old price and we were able to dispose of it at the higher prices, and that is where our profit came in. Oak was practically in the same class as birch; at the beginning of the period it ran about $65.00 to $70.00 a thousand and it gradually raised until it reached the point around $200.00 and over a thousand. I am speaking of one particular grade of these woods that is most universally used in our line, and that is what we call first and seconds so as not to confuse it with the lower grades. All other materials which go into the manufacture and production of mill work increased relatively in the same way—nails, screws, glue, and sand paper; every-
318 thing advanced from two to three times the price that existed in the spring of 1918.

Regular wide-open competition existed between the mills manufacturing interior finish in Chicago in the years 1917 to 1921, inclusive. It was acute and sharp, particularly in those lean years when there was little to do and everybody was scratching for all the business he could get to keep his plant running and to try to break even. Competition was as sharp as I have ever seen it. The mills in Chicago were always in the sharpest competition with one another.

I know of no effort on the part of the millmen in Chicago to get together and maintain prices and divide the business or territory. With reference to the custom prevailing in Chicago as to the submission to millmen by architects and contractors and owners of particular jobs for competitive bidding I would prefer to describe the methods pursued on some typical building rather than the large one of the character of the Continental Commercial Bank Building, because that is really in a class by itself. An ordinary apartment building would be more typical. There the contractors who are bidding to the owners and architects upon the job will ask the mills for a price or a bid on the mill work; usually they do that in order to use these figures to compute their own completed bid, adding to it the cost of their lumber and other materials that might enter into their bid and their labor; and using our mill prices together with these other things they compute their total bid and submit it to the owner or architect. They may call upon three or four or half a dozen mills for a price upon the mill work for a given job even before they have submitted their own bids to the owners. After the bids have been submitted to the architect representing the owners or to the owners direct and the award is made by the contractors or owners to some contractor for the particular building, then, of course, it becomes the business of the mills to attempt to secure the order for the mill work for that job from this successful contractor; and that is the one that we would center our efforts upon to sell the goods. We would send our salesman to him and call upon him and talk about the service that we might be able to give to the particular job and
319 the quality of our goods and give him our prices and endeavor to make the sale. There would be plenty of competition. Six

or eight of them, or whoever was on the job, and perhaps some who never were on the job might follow it up from the daily building permits, and go after this contractor for this particular business, just the same as the lumberman would send his salesman and solicit and sell him the lumber and the hardwareman would sell him the nails, and so forth, and that is the way we try to get our business.

In the year 1917 and the early part of 1918 there was really no direct competition between the out of State mills and ourselves. The outside mills did not come into this market and go after the millwork business in the same manner that we did. I do not know why not unless it was because they were so far away. They could not give the same service as to delivery. Most of the outside mills were manufacturers of standard and stock goods. In a case such as the Hugh McClemmans Apartment Building at 227 East Delaware, if local mills are bidding for millwork on that particular building, the outside manufacturers would not come in and get that business away from the local people because they could not give the same service that we could locally. We are right here on the ground and we can make deliveries just exactly to meet the progress of the building and that the building would require as to deliveries, whereas an outside mill would have to ship his stuff in car loads and it might necessitate the storage of that material in warehouses until the building was ready for it and it might incur delays in transit. It certainly necessitated the cartage from the car to the building, and every time you handled this stuff you know you injure it more or less. Those are some of the reasons I think they could not do it successfully. And then again in every building while there might be some standard stuff the major portion of it was special stuff, and they were not in the same advantageous position to do this special stuff that we were here, because when the building reached a certain point, with the partitions in place, we were ready and right here on the premises to watch it, and send our men on the job to take the measurements of the special stuff that had to fit in between certain places and recesses between two walls and we could go right back to the factory and get it going and make it, but the
320 outside concerns, a hundred miles or more away, were not in a position to give that service, and the result of that situation was that the outside, or foreign mills, sold practically nothing but their standard stuffs to the Chicago market.

They sold the standard stuff to manufacturers and dealers of millwork and lumberyards right here in Chicago. Seventy-five to eighty per cent of this was bought by the mills themselves, who were the real customers of the outside or foreign mills instead of being their competitors. Of the other twenty-five per cent that was not sold to the mill operators themselves a very small part was sold direct to the builders and contractors and owners. I would say not over five to ten per cent of the material and the other part, I think, went to the lumber yards and the contractors and owners and builders

or architects, and I think they bought only in very rare instances from the outside factory. I have in mind only one specific instance and that is the Edgewater Beach Hotel. That is my experience in a business career of thirty-five years.

I think I heard testimony here that some mill did not sell direct to scalpers or lumberyards, but I do not know which one it was. As to the reason for that business policy on the parts of the outside mills it would be natural that they would want to sell their stuff and maintain the custom that they have established among the mills and would not want to sell to someone who was in direct competition with these mills. It was natural that they would want to favor their best customers.

I think the 1915 contract between Division G and the union expired the 1st of April, 1918. Negotiations for the new contract to begin at the expiration of the 1915 contract were first taken up the latter part of December between a committee from the union and a committee from the employers. The committee from the union was composed of Mr. Brims, Mr. Fox, Whitman, Smith, Sommers, and one other, whose name I do not recall, but the agreement will show his name. They were the ones that negotiated the agreement. The labor committee from our division—Mr. Reynolds, Mr. Morris, and myself—represented the bosses. We first met the men representing the carpenters in a committee room in the Lumbermen's Association and the persons I have named were present. I do not recall
321 whether there was anyone else present, although Mr. Olson may have been there. Mr. Olson was the chairman of our division during that period and had a perfect right to be present at any conferences that were held, he being ex-officio, a member of all committees. Mr. Hooper, the secretary, was there.

Mr. Brims introduced us to these representatives of the union. I did not know one of them before. We had not negotiated other contracts with these same men; they had departed from their general custom in this instance, as prior to this time all negotiations had been with regularly constituted business agents. At this particular time they had elected a committee from the shops themselves, from the workers at the benches. We had nothing to say about it. They were properly constituted representatives Mr. Brims said, so that we were perfectly willing to transact business with them the same as we would have done with business agents. The explanation as to why the business agents were not there was made to us by Mr. Brims.

My recollection is that Mr. Whitman acted as spokesman, explaining how they were constituted and why they were there. Mr. Brims had already done so, and he then said, "We have drawn up an agreement to go into effect when the present one expires, which we would like you gentlemen to take under consideration." They handed us a little talk about how living costs were going up and how the necessities of life were advancing, and they asked us to take this agreement asking for an increase in pay under consideration,

and we told them that we would study their paper and meet them again at an early date. Nothing else was said.

Nothing ever was said in that conference concerning article 3 of the outside agreement. The next conference, I think, occurred between the 5th and 9th of March, 1918. I think we had just one conference between the 5th and 9th of March with Mr. Brims and his committee in 1918, and the one in December, 1917, which I have related. In this agreement which they handed to us the journeymen carpenters were asking for an increase over the then existing scale of wages of ten cents per hour. The existing scale was forty-five cents and they were asking fifty-five for the first year, and for the further increase, I think, of another ten cents for the next two years, sixty-five cents for the next two years. They also
322 asked for a reduction in the working hours from 8½ hours per day to 8. I certainly heard in the year 1918 that there was an effort on foot to change article 3 of the outside agreement. I do not recall when; it might have been early in the year, the spring of the year. That effort had been made so many times it was almost a constant effort on the part of the union to change article 3. I have a specific recollection of having been told it in the year 1918, but whether that was the first time I heard it or not I cannot say. This recollection which I have was in a meeting with Mr. Doyle and his committee some time along about the 9th, 10th, or 12th of March, in which he told me that the unions were attempting and demanding a change in article 3. I had known it before but that is the specific instance I remember. I knew it as early as January. I think it was agitated longer than for the last fifteen years. I think it was agitated twenty years, ever since the eight cardinal principles had gone into their contract.

In 1915 the union went out on a strike to enforce this principle and it lasted some three months or more. Our mill was shut down and out of business all of that period. The unions were defeated finally and had to concede the article as it originally stood. As to the reason why the contractors in 1915 resisted the demands of the unions to eliminate or change section 3 of article 3, it was one of the eight cardinal principles that was in all of the agreements, not only of the carpenters, but all other business trades, and I presume it was a matter of pride as much as anything else. They wished to retain those principles and not yield on any of them. I don't know any particular reason they may have had in mind, unless it might effect the cost of their materials, but that was not the case. I think it was largely a matter of pride on their part. They did not wish to kick over any of those eight cardinal principles.

The reason why the carpenter contractors made a fight against the change of article 3 or the elimination of article 3 from a business standpoint was that they probably felt they had a more open market with that article as it stood than they would have if it were changed. In 1918 the carpenter contractors stood practically the same way, the great majority of them was still opposed at that time to making and change. They stood the same way as they did in 1915.

323 I did not especially care personally. I did not believe it would make a difference to our business here. The percentage of outside stuff as compared with the total was so small I did not think it was going to affect us materially one way or the other.

Q. What would you describe as your own mental attitude towards the suggested change before it was made?

Objection. Objection sustained. Exception by millmen.

If the unions enforced the principle it would have the effect, if we were using nonunion material from any sources, that we would then have to use union material or manufacture it all in our own shops. There was union material available.

I should say that there were at least one hundred mills around Chicago which were unionized and able to ship in union material. There were eight or ten right down here in Indiana, Indiana Harbor, and Gary. A large one in Louisville, Kentucky, one at St. Joseph, Michigan, several in Milwaukee. They were scattered all over. There were some in Iowa, Missouri points, Ohio, Pennsylvania.

I do not know how many there were in Illinois outside of Chicago engaged in the manufacture of millwork, but there were a great many, I believe, possibly three hundred.

During the year 1918 I conferred with a committee of the carpenter contractors' association as a member of Division G, I think it was their trade relations committee. Mr. Doyle was the chairman of it, or at least was presiding at these committee conferences. Mr. Jeffrey, Mr. Morrice, and Mr. Evans were there; I think there was a Mr. McCann, and there may have been another or more; I don't remember the names just now. Morrice, Jeffery, Evans, and McCann are in the contracting business here in Chicago. I think they live here now. They are not defendants in this case, to my knowledge.

That is the only committee of the carpenter contractors that our labor committee conferred with during the year 1918. We had our first conference with this trade relation committee of the carpenter contractors early in January, 1918, to the best of our recollection, in the committee room of the Contractors' Association about two o'clock in the afternoon. The meeting lasted about an hour. On our
324 side there were present Mr. Reynolds, Mr. Morris, and myself, and Mr. Olson may have been present, although I do not recall him clearly on that occasion. On the contractors' side Mr. Doyle and these gentlemen I have mentioned, and possibly one or more that I do not remember. I do not think there was any occasion for keeping minutes. It was a sort of a friendly discussion.

I was called on the telephone either by Mr. Hooper or by Mr. Olson and asked to meet with a committee of the contractors, who wished to meet with a committee of our division to talk over trade matters. Whether it was Mr. Reynolds or Olson, or Hooper who called me, I do not recall. They told me the time and place the meeting would be, and I said I would be there and I was. I do not know that we knew at the time we were first called in what it was we were wanted for and there was nothing to be referred; we did

not know what the subject was that the contractors wanted to discuss with us. They simply wanted to meet a committee, and it was always the custom, particularly on Mr. Hooper's part, to refer everything to us. We were about the only active committee that did any business for Division G. I did not hear Mr. Doyle state here in substance and effect that this first meeting was solicited by us. It is not a fact.

Q. Will you please now relate what was said at the first meeting of the labor committee of Division G, trade relations committee and the Carpenter Contractors' Association.

Objection by Mr. Thompson on behalf of the union defendants on the ground that his clients were not present at the time the conversation and statements took place.

Objection overruled. Exception by union defendants.

The court ruled that an exception might be preserved to every conversation made out of the presence of the union defendants.

Mr. Doyle was principal spokesman for the contractors and Mr. Green also spoke. Mr. Doyle said: "We have asked you gentlemen to meet us here to talk over what we consider are some of the abuses that exist in our business relations, and we would like to lay them before you and see if we can not remedy them." He said the
325 practice of submitting prices for any changes or extra on a job while in charge of the contractor, the practice of giving prices on such changes to the owner or architects should be discontinued; that it was not fair to the contractor to have the mill men come in between him and the owner and tell the owner what changes might cost. That was one item. He said he thought that the contractors as a whole should receive from us a liberal discount on their purchases.

He said that the matter of quoting prices and so forth was an unfair custom. That he believed it was unfair that a mill should quote a price to an architect or an owner on any change that might be in contemplation, or any addition to the original plan; that such prices should be given directly to the contractor, particularly if he was still in charge of the job at the time.

I might illustrate it in this way: We will say that a change is in contemplation in a building that had not been covered by the original plan, and the owner or architect might ask the mill how much it would cost.

Let us take for instance the building of an additional partition across a room with another pair of doors in it, and the owner or architect might ask the mill: "What is it going to cost me to put my doors in here if I run a partition across here?" They probably would be told that their doors with its jambs, trimmings, etc., would cost about so much.

Then later on the contractor would be requested to put in this partition and would do so, rendering his bill not only for the entire material but for the partition and all of the labor that went into it. He said: "In such cases the architect and the owners frequently questioned their charges and said: "Why, the mill men in this in-

stance told me this set of doors was going to cost me only so much," and it necessitated then, on the part of the contractor, a lengthy explanation of why it cost so much more.

Included in his price naturally would be the labor of installation, the cost from the mill, together with a profit for which he was entitled to; and his overhead, and the cost of the partition perhaps that run across the room, and everything incidental to it, and that might seem, he said, to the owner or the architect excessive because he had already been told by the mill men that these doors
326 would cost a certain sum. "To avoid any such contention," he said, "this practice should be stopped." I think that covered all we wished to say on that subject. I think he did say that there were instances in his own experience where an owner or an architect might order of the mill some additional work and the mill would go ahead and produce it and deliver it and possibly the contractor did not know anything about it. He said not only should we discontinue making prices to owners or architects, but discontinue taking orders from them while the contractor was in charge of the job; that that was the contractor's business to do that with the mill, and not the owner.

As for our committee I think one had as much to say as the other; maybe I talked a little more. I told Mr. Doyle I thought his requests were fair; that I thought he was all right on that and personally I would make every effort to see that it was done, recommend it to my division that such a rule be adopted.

As to the second proposition, the discount to the carpenter contractors, he said that we must certainly regard the contractors as our principal customers and as such we should give them a liberal discount; that they were in a sense our wholesale customers. He said that he thought the contractors as a whole covered approximately ninety per cent of our sales and that therefore they should be given first consideration and should be given a discount as against other people who were not in the contracting business.

I don't remember that he said what contractors should be given a discount; he may have said that he wanted it for the members of his association. Later he said he wanted it for members of his association.

At this first conference I said I thought he was right; I thought they were as a matter of fact our wholesale customers; that I thought that the contractors as a class covered about ninety per cent of our sales. I said: "I think you are entitled to some consideration; what have you in mind in the way of discount?" He said: "I think we ought to have a trade discount of 25% and a cash discount of 5%." The 25% was to be a straight discount on the quoted price; that was a trade discount they were to get, then the 5% was to be given only in the event they paid their bills promptly or at least 85% of
327 their bills promptly. That is a custom in building industry that has been in vogue for years—85% is the amount paid on building construction and on building material as a rule. The re-

tention of the remaining 15% is for the purpose of having some security in the hands of the other side that the balance of the work will be performed. In other words the builder or owner only advances 85% of the contractors bills, retaining 15% as a guarantee. This is a custom and it is usually so embodied in the building contract.

I said that 25% was out of the question and excessive, that they would run our prices up to a point where it would interfere with the smooth continuity of building construction; that people would not stand for it; that twenty-five per cent was out of the question. I told them again that I thought they were entitled to something and that we might consider some such thing as five per cent trade and two per cent cash but both Doyle and Green thought that twenty-five per cent was about right. I think I have now related the substance of what occurred at that first meeting. I have no specific recollection of anything else that was said. The question of labor conditions was not touched at that meeting, and there was nothing said about the renewal of the contract with the outside carpenters nor about article 3 or its amendment.

Our next conference with the trade relations committee and the carpenters contractors I would say was in the early part of March, the 10th or 12th. We had not reported result of our first conference to Division G before our second conference. I do not think there had been a meeting of Division G between the first conference and second conference. I think our meeting was after the second conference with Doyle and his committee. If the minutes show March 5th we must have had it then. I know it was along about the 10th or 12th of March we had our second conference. I remember the action taken at a meeting of Division G of March 5th, 1918, in which the minutes show the following:

"Mr. T. C. Reynolds made a report of the labor committee meeting with a committee from the Carpenter Contractors' Union who had presented a contract, calling for wages of fifty-five cents per hour for the first year and sixty-five cents per hour for the
328 next two years, all working conditions of former contract to remain the same except as it applied to foremen."

I also remember that after the matter was discussed it was the sense of the meeting that it be placed in the hands of a labor committee without any recommendation with the request that they make the best possible contract.

We had not had our second conference with the carpenter contractors' committee before this meeting of March 5th. Pursuant to the authority delegated to us in this meeting of March 5th, to make the best arrangement we could with the journeymen carpenters we had a meeting with the journeymen carpenters within the next day or two. That was the first meeting since December, 1917. It occurred in the committee room of the Lumbermen's Association over on LaSalle Street. We usually met at two o'clock in the afternoon and I think that was the time. I think the same

people were present who were at the earlier meeting in December. Besides myself, Reynolds, and Morris, possibly Hooper and Olson were present; I have not any clear recollection; Hooper was usually in those meetings. The spokesman for the union asked us if we had given the agreement we had formulated and submitted to us in December any consideration and we told them that we had; that the advances in wages they were requesting were out of line with conditions that existed in the business at that time, that we could not afford to pay them such advances. They came back with the same arguments that their living costs had increased all along the line, rents were higher, everything was higher and they had to get more money to get a living wage out of this line of work. It was stated in the demand that they wanted ten cents an hour higher. I suppose they said how much higher the price of living had gone. There was argument like there always is in those meetings. We were trying to hold the pay down as well as our industry will stand and they their best to raise it up. They were doing the best they could and we were doing the best we could for our people.

In order to stop the argument on the pay business we went to another article and touched on this hour reduction from eight and a half to eight and they asked us what we thought of that change. We told them we did not think that was so serious a matter to us, that was something that was bound to come anyway. We had
329 felt that was going to be one of the next demands and that we would be ready to concede that if they would give in in their turn and recede from their demands as to wages. It was a sort of trading proposition. Those things are usually compromised if you could make one. They asked us what we meant by receding. We said we will make you a fair proposition that we can take back to our association and recommend to them; that we would recommend this agreement with the five cents advance per hour for each of the three years. They seemed to take that pretty good and we were a little encouraged. They asked to be excused from the room to talk it over. Our committee stayed in the room and we kind of made up our minds that they were going to take it, and were sorry we did not make it lower. They came back in a short time and either Mr. Brims or Mr. Whitman said: "We will recommend it to our building trades council and put it to a referendum on one further condition that you will concede to pay double time for any work done on Saturday afternoon." We said we did not care much about that, none of us cared to work Saturday afternoons anyway and if we had to work Saturday afternoons we thought it was worth double and to let them have it. We said, "Go ahead; we will recommend this to our division and make an agreement on that basis with you. If you fellows will recommend it to your council, to your referendum at the local and pass it." Mr. Brims said: "You might consider the agreement fixed on that basis, we will see it goes through on that basis, if you will." I said: "All right; we will." We already had authority to make an agreement without

going back to our association but we did not say so to them. That was all that was done at that meeting. Nothing was said at that meeting with reference to the outside agreement between the union and the carpenters and the carpenter contractors. We had nothing to say about that and were not interested in it. The subject of Article III was not mentioned at that meeting. This meeting that I have just testified about with Brims and his committee was held prior to the second meeting with the trade relations committee of the carpenter contractors.

We had our second meeting with the trades relation committee of the carpenter contractors either the 10th, 11th, or 12th of March, along in there, probably the 10th or 11th. I am able to fix
330 the date so definitely because I know we had concluded our negotiations with Brims and his committee. This was along about the 6th or 7th, and I know it also from a minute I have seen here, that the Building Trades Council acted upon our committee agreement upon the 9th of March in their meeting and accepted it, and ordered it to a referendum and I know this meeting with Doyle was a day or two following the acceptance of our agreement with Brims by the district council.

I think this conference occurred in very much the same manner as the previous one. I was called up by Hooper, Reynolds, or Olson, stating that the contractor desired another meeting with our committee for the correction of the trade abuses and the discount. The meeting occurred in the committee room of the contractors' association in the Chamber of Commerce Building. It is not the same building in which Division G holds its meeting.

At the second conference I think practically the same men were present who were present at the first one early in January. At this second conference I think both Doyle and Green went over the matters again that they had presented to us. We agreed with them that the first item they wanted was a fair request. That was the one where we should discontinue making prices for changes to owners and architects, or accepting orders direct from owners or architects for changes; that all such things should come through the contractor so long as he was in charge of the job. We told them that was a perfectly fair and proper request, and was the right thing for us to do, and that we would certainly recommend it to our division.

With reference to the cash and trade discount that they were seeking, the argument went on in the same manner as it had in the previous meeting, they insisting that the amounts named, twenty-five trade and five per cent cash were fair and proper, and we were arguing that it was too much, that we could not conscientiously or in any other way recommend to our division any such high rates of discount. We were still standing upon the five and two stuff. I mean by that five per cent trade discount and two per cent cash discount. The discussion was on that. We thought they were entitled to some

discount but it was always a question as to the amount that the dispute was on. The discussion was just a repetition of the same stuff. Mr. Doyle said that he wanted the discount given for
331 the members of his association only. That one of the effects of that would be that all contractors eventually would become members of his association, and he was seeking in this method to build up his membership, so that they could have a large percentage of the men engaged in this line of business. They could handle their collective affairs better on account of having a greater number of people in it, and such things, as the making of new agreements with unions, and would cover a greater number of men than it would if their membership was small. In short, he was anxious for that, because by this method it would build up his organization numerically and otherwise, give it more strength. Our position on that discount business—this was one of our arguments, I don't recall it now, that we had only a matter of perhaps forty or forty-five per cent of the concerns engaged in our line of business in our association. And that if all the members of Division G would agree to give this discount, and others who were not members of our Division, and over whom we had no control whatever, and who might know nothing of this discount matter, did not do so, why, our bills would appear to be very much out of line. Our bids would be that much higher because our point was if we figured up a bill of work and the discount was to be given to the contractors upon that bill, that discount was to be added to it, was to be placed upon it, so when it was taken off we would be back to the price that we originally expected to sell this bill at, and that net price would be the price that non-members of our Association would be quoting, and therefore our price would look out of line, although the net price we were wanting to get would be the same, perhaps.

Something was said about the effect of so large a discount discouraging building operations. It was one of the point at this conference, which Mr. Doyle raised. We had a memorandum there before us. When I came into the meeting there was a little typewritten memorandum which was laid before our committee; there were three or four copies of it, an original and maybe three or four carbon copies placed around the table, upon which these demands were outlined, which we had under discussion in the previous meeting. It must have been either Mr. Doyle, Mr. Green or one of the contractors who brought that memorandum because it was there when
we arrived, and upon these papers there were these two or
332 three articles. I think the paper was headed "Articles of Agreement Submitted to the Millmen," or something like that. This point about the wide difference in quotations might occur in Article III, after the second article it mentioned the discount. It said article 3—Prices quoted to others, owners, architects, and others than contractors shall be full estimated prices, meaning that the gross price should be quoted to such people the same as the con-

tractors, but that the contractors would have the discounts on those prices. You see the point we raised there, if we quoted these gross prices and non-members quoted their net prices we would be out of line, especially with such a large discount as they were asking.

There were analogies used by Mr. Doyle in connection with their argument that they were our wholesale customers. They stated that large houses had a discount on their selling prices if they sold to wholesale houses and jobbers, and another price that they sold at retail and they were in the same position and in the same relation with us. After a time we reached the conclusion as to what we would recommend to our association. During the discussion which was a lengthy one, I think I asked Doyle: "How are you getting along at this time Doyle with your outside agreement?" You understand we would discuss matters sometimes that were not pertaining to the thing right before us. He said they had everything in pretty nice shape and that there was only one stumbling block and that was article 3 of section 3. He said that they had agreed upon practically everything in the arbitration board and that the council had arranged a referendum vote; that they had agreed upon wages and all conditions and that his association would not at that time at least concede the change in article 3 as Mr. Brims wanted it. I said that that was too bad and asked what the result would be. He said he didn't know, but we are liable to have a strike. That he thought that this time the union was certainly going to insist upon a change in that article. That they had been fighting for years. I said that I remembered what we went through three years ago when we were shut down completely for four months as a result of their strike. I said: "For heaven's sake don't bring on a condition like that again." He said: "What am I going to do. My association will not stand for it. They have turned it down not once but repeatedly." I
333 said: "If you are going to tie up the building industry in Chicago again and ruin everything and make us shut down our factory, we will be in a devil of a fix. Don't do that whatever you do. Keep things going." He said: "How am I going to do it?" I said to myself that this was a chance to make a trade with this bird so there would be no tie up. I said to him: "I will tell you what we will do, Mr. Doyle. You go ahead and make peace with your union. Make peace, for Heaven's sake don't create a tie up, even if you have to give article 3 like Brims wants it, it won't make any difference, it won't affect things very materially, you know that as well as I do." He said: "I don't know about my association, they won't stand for it." I said: "They will stand for it at the end of a strike, may be after everything is ruined. Now, don't bring on a strike. I tell you what we will do, if you will make peace with your union, even if you have to concede this change in article 3, we will take the things you want and recommend them to our association. Now, that is what we will do for you. Go ahead and make peace." "Well," he said, "I don't know. We have agreed upon it in the arbitration board, but of coarse I know the union is voting upon it and un-

doubtedly will vote favorably, but I have not been able to put it through my association." I said: "If you bring on a strike, that will be too damn bad, that is all. We will be ruined, don't let it come." I got real excited about it, because I did not want to see another tie up. I had been through enough of that for the last few years. The result was that one of us on this memoranda wrote on it in pencil, calling it article so and so, in your agreement with the union article 3 shall read: "There shall be no prison-made material used," which was the form in which the arbitration board had agreed to it at that time, and was the form in which Brims had submitted it to a referendum vote in the union.

I do not know what became of this document on which we had written this suggestion. I don't know that I wrote it, I don't believe that I did and I don't know what happened to it. Nothing was said about the final agreement with the two committees being put in writing and sending it back for signature. It was simply talked over, written out, and I presume Mr. Doyle got it. In a measure this particular article was addressed to him; in its
334 very wording it would indicate that, "In your agreement with the union, do so and so." The result was that at that meeting a definite agreement was reached between the parties so far as recommendations to our respective organization were concerned, and that agreement was subsequently reduced to writing and signed by some of the members of our association. That is the agreement which was introduced in evidence yesterday as millmen's Exhibit 1. I think that the fourth section of the agreement, which is as follows, "The contractors' association will discourage the purchase of any mill work from lumber dealers by their members," was one that our side requested in connection with the argument regarding the discount. It was that class of people that were nonmembers largely of our division who would not be aware of any trade discount arrangement, and if the contractors would buy their goods or ask for prices from them they would naturally be as much lower as ours were higher by reason of advancing them to cover the discount. I think the proposition came from us.

I think the sixth proposition which read, "The elimination of all estimates on the selling of mill work to anyone cheaper than had ordinarily been quoted to contractors," was a proposition that came from Doyle to us, and the same is true of the first, second, and third propositions. As to all six of these propositions, four of them were propositions from the trade relations committee and the other two, namely, the fourth and fifth were propositions from our committee to the trade relations committee, and our association all agreed upon it at that meeting. In reaching this agreement, millmen's Exhibit 1, I was not at all impelled by any consideration of keeping nonunion or foreign made material out of the city of Chicago market. I do not think that anything was said in that conference with reference to keeping nonunion or foreign made material outside of the city of Chicago, and that consideration did

not form any part of the motive which induced us to enter into that agreement.

I was told by Mr. Reynolds of the circumstances under which he and Mr. Morris signed this agreement. Mr. Reynolds told me that the article that we had agreed to in this committee, Doyle had requested that they be signed, and had sent the memo over to the Lumberman's Association office. Hooper had it, or Olson,
335 who was the chairman of our division, and they signed it, which was exactly as we had made our arrangement in the committee. I did not sign it because I was out of the city at the time. I would have signed it if I had been here. My motive in inducing Mr. Doyle to yield to the union in the manner in which I have described was not to have an interruption in the building industry again, to prevent a strike and the result of a shut down of our operations, and as a result of that, losses. I certainly never had any purpose, desire, or motive to impede, interrupt, or obstruct interstate trade or commerce in any way.

I think I attended an informal meeting of Division G where the question of trade discount was discussed, a meeting where no minutes were ever kept. I should say it was somewhere in the early part of March, it might have been a day before this second conference with Doyle, or it may have been the same day, for all that I remember. The second conference with Doyle was about the discount. A number of the members of our division were at the association for the purpose of talking about this thing in order to express how they felt about this committee going on any farther with the contractors. You understand we do not feel we would like to go ahead on any such thing without consulting with a number of the others, and we called them down and told them what was going on with the contractors and asked how they felt about it, so that we could go on feeling that we were doing what our membership would wish us to. This was not a regular or specially called meeting. It was just a meeting of a dozen or less to talk this thing over and find out where they stood. I think we called the meeting. We wanted to get the fellows down there to talk about it. In matters of that sort when we wanted to discuss something with a dozen or more of our fellow members we would usually divide the thing up, Mr. Reynolds would call up three or four, Mr. Morris a few, and I would call up a few of them to come down, because we wanted to talk about something. Before we called this meeting we had had word that Doyle wanted to meet us again. There were present at this meeting Morris, and Reynolds, and myself, and Olson. I don't remember whether Hooper was there; sometimes he was and sometimes he was not. He had a lot of other association work to do. DeSwartz, I think, was there, and Dick-
336 erson, I think. There were so many of these gatherings it is pretty hard to tell who was there and who was not. It was a small meeting, perhaps a dozen people, eight or ten.

We explained to these gentlemen that the contractors wanted us to entertain a correction of some trade abuses and they also wanted a discount; that they had asked us to meet with them and we wanted to know how some of the fellows felt about this thing. We did not want to go ahead all by ourselves. The general sentiment was that the first item was absolutely fair and proper; that the trade discount asked for was high, twenty-five at that time and we told them that we had talked about a five per cent trade discount and a two per cent cash discount; that the contractors were not satisfied with that, but anyway these men are our real customers and we have to give them some consideration; that we have got to do business; that we had better meet them again and try to do something that would satisfy them. That was about the substance of that little meeting. Nothing was said at that meeting about offering to recommend the trade discount if Doyle would recommend yielding to the union of the change in article 3, because we did not know at that time that the matter had progressed as far as it had. At that time we had not contemplated making any suggestion to Doyle.

My recollection is that I did not again confer with the trade relations committee of the Carpenters Contractors' Association until some time in June, about June 10th, I should say. I fixed that date by the minutes that we have of a meeting of Division G on that same date. Independently of the minutes I know that a period of approximately three months elapsed before I saw any of those contractors again. The division said that this was a matter for the trade relations committee of our division to handle and it was turned over to them. I presume that is one of the reasons I did not see these people again until June 10th. That meeting was held in the contractors' committee rooms in the chamber of commerce. Up to that time our fellows met over there when we met them. There was no particular reason for that, it was just a matter of convenience. Mr. Doyle and Mr. Green are the only two of the contractors whom I remember to have been there. I think all of us were pres-
337 ent, Mr. Morris, Mr. Reynolds, and myself. Mr. Doyle said that he had asked our committee to meet with him with regard to this committee arrangement that we had entered into with him in March. He said, "You folks have not put this thing through for us, and you have turned it over to another committee. I want to do business with you fellows. I have had all my business with you fellows up to date; you know all about the situation, and I want to do my business with you." We explained to him after our meeting with him in March that we had reported this matter to our division and the division had seen fit to put it into the hands of the trade relations committee, and with certain recommendations as to what they should so; what that committee should do. He said: "Yes, I know; they have been over to see me, but I want to do business with you folks because you know more about it. You were

in it from the start and I want to continue my negotiations with you." "Well," I said, "I am sorry, Mr. Doyle, we can not do that; our division has turned the proposition down, just like we said we feared they would. They accepted everything except the item of the discount, which they state is excessive." "Well," he said, "I know, of course, that the agreement we made there in the committee in March has not been carried out exactly; has not been carried out to the letter. It might be possible, if we talk things over a little bit further, we could get together." He said: "I would like to come over to your millmen's association and talk to your membership about this situation." I said: "That will be fine; come right over; we will arrange a meeting; come over and bring Mr. Green along, or anybody else that you want to, and tell our membership all about those things the same as you have told it to us."

When he said that he knew the agreement was not exactly as they had agreed upon it, because on this memorandum agreement it says: "Article three shall read, 'There shall be no prison-made material used.'" When the contractors finally made their agreement with the union they reconstructed this thing so that it reads "There shall be no restrictions against any manufactured material except nonunion and prison-made." I should say practically they meant the same thing. They do not in terms mean the same thing, but for practical purposes they mean the same thing. As to our un-
338 derstanding of the matter under the clause, "There shall be no prison-made material used," it left the matter open optionally, it seemed to me, for the union to do as it pleased about it. They could either refuse or not refuse to erect nonunion-made material. I think that is what everybody felt that that meant. I understood that is what Mr. Doyle had reference to when he said that. That is what I had reference to when I quoted Mr. Doyle in the meeting of June 10th, as shown on the minutes.

I remember of the first meeting of Division G that occurred after the first meeting of March 5th, 1918, and I think it was on April 19. It is difficult for me to state who were present at one meeting and not at another. I have been over the minutes and refreshed my recollection in every way that I could with a view to testify here. I would say that one or both of the Anderson and Lind Company; Bartuska, of the California Manufacturing Company; Mr. Dierssen, of the Chicago Door, Sash and Blind Company; Mr. DeSwart, and possibly Mr. Knight, of the Commercial Sash and Door Company; Mr. Root, of Nollau & Wolff Company; Mr. Decker and perhaps Mr. Gamble, of Chicago and Riverdale Company; Mr. Kall, of Hartman-Sanders Company; Mr. Reynolds and perhaps Mr. Werkmeister, of the Union Interior Finish Company; Frank Collins, of Barr & Collins; Frank Heitmann, of the Heitmann Lumber Company; Mr. Dodd, of the Sterling Lumber and Mill Company; Mr. Harry Morris, of Wm. Morris & Sons; Mr. Stewart, of the Stewart Mill and Lumber Company; Mr. Olson, of the Standard Sash and Door Company;

Mr. Lockwood, of Lockwood & Strickland Company; possibly Mr. Stevenson, of the Commercial Sash and Door Company; possibly Mr. Dick and Mr. Traeger were present at this meeting. I think Mr. Traeger was there more frequently than Mr. Dick. Both of them may have been there. William D. Dreiske, of the William Dreiske Company, or Mr. Dickerson, of the Stewart Company, was there. Dickerson attended more frequently than Mr. Stewart. Mr. Barsek, of the Barsek and Proctor Company; Mr. Bedard, of the Bedard & Morensy Company; and Mr. Beck, of the Beck Lumber Company. I do not remember any others.

The labor committee, consisting of Mr. Reynolds, who was the chairman, and Mr. Morris and myself, reported that we had
339 concluded our negotiations with the union covering our inside men for a three years' period, and I think that the report we made was accepted and concurred in. I think it was at this meeting that this matter of what disposition would be made of the goods on hand that were not union made was decided. That is about all I can recall that occurred at that meeting. The meeting lasted several hours, because the discussion on the effect of this article 3 in a contractors' agreement with the union would have been our business. I don't think Mr. Irvine was there. The discussion was on the effect that this principle of the union refusing to work upon nonunion-made goods would have upon our business. The discussion was heated and rather disagreeable part of the time. The great majority of our members in the division said that it would have a very harmful and injurious effect on their business and they would have to find new sources of supply and they criticised us as the labor committee for not having seen to it that this thing was not put into effect. They said we have been lax in our work and they had thanked us a few moments before for having consummated our agreement with the inside men so satisfactorily but now they were jumping all over us for not doing something over which we had no control at all.

The thing that they were more particularly interested in at the moment was the goods on hand. All of th'm or nearly all of them, had large stocks of material in their warehouses of stock goods they had been bought wherever they pleased to buy it and some of which was probably not union made. They said: "What disposition are we going to make of this stuff? We can not suffer any losses, etc., and go on." Well, the thing resulted in our committee saying we believed that some fair way would be arrived at by which these people would suffer no losses on account of having this material on hand, and we would make a further endeavor to perfect some arrangement whereby they would get a fair deal on it. It was known of course that the contractor's agreement had been consummated and this article 3 was as it was, and that the union now would enforce its principle of not working on nonunion-made stuff and this was nonunion-made stuff. Lots of it was, and we wanted to know what we would do about it. That was the principal thing that was

340 there at that time outside of the fact that many of them criticized the labor committee for not having taken an active hand in the matter and perfected it. We told them we had no active hand in the matter. We told them that we had urged the trade relation committee to yield to the union only to the extent that they had to yield to avoid the lock up or tie up. I think Mr. Anderson expressed himself at that meeting. Most everyone did. Mr. Bartuska and Mr. Beck most emphatically did. He said he would have to rearrange his whole method of purchasing if this was effected. Heretofore he had bought his stuff wherever he pleased and now he would have to find new sources of supply. Mr. Bedard was a very quiet old gentleman and I think he had very little to say. Just what his attitude was on the matter I don't know. Mr. Barsek was a very quiet man and I don't think he said anything. Mr. Collins ripped us up the back; he said it was an outrage that this thing was effective, and he would not have countenanced it if he could have done anything to have stopped it. His general argument was just like the rest, that we had been getting stock goods wherever we pleased, and now we had to rearrange our whole method of doing business to buy from union factories only, and what were we to do with the stuff on hand? We finally assured them that we would make some arrangement and that they would suffer no loss. No definite arrangement had been made although it had been talked of, possibly just among ourselves, that some scheme may be involved so that these goods may be used. Mr. Decker opposed it, and said that this thing was going to affect them very materially so far as what little business they had because of the fact that they would now have to find sources of obtaining union-made material. He said that probably 90 to 95 per cent of their business was reshipped away from this point to other cities and States and therefore he would be affected only to that small percentage of local business, but he was opposed to it anyway.

Mr. DeSwarte said it would affect him very materially as to his source of supply on doors; that was the principal thing he was interested in. He practically manufactured everything else except the stock doors and he was interested in knowing what would be done with the stock he had on hand. I do not know that Mr. Dierssen said much on the subject, and I don't know that he
341 was personally affected as much as the others. He did more special work and had no occasion to use standard or stock material.

Dickerson was of the Stewart Lumber Co. He was bitterly opposed to it and expressed himself to that effect. Mr. Dick was primarily interested and opposed to it because of his stock of doors. He asked where he was going to get his doors, stating that he had been buying them wherever he pleased and now would have to get other sources of supply. He was opposed to it and said that we should have seen that this article was not effective as it is. I do not remember any specific remark that Mr. Dick made. Oh, yes, it was

Mr. Dick who said: "If this thing goes into effect I am willing to sell my place of business and I am through."

Mr. Dodd, who was the Mr. Dodd that testified for the Government, was bitterly opposed to it and so stated. Mr. Drieske was bitterly opposed to it, and he was not a manufacturer at all, but was a dealer only and ran a lumber and coal business and he handled mill work and bought it all, practically; some local and some outside. Mr. Heitmann was opposed to it very much. Mr. Koll was in a special line of business and he would not be so much affected, and said so. He specialized in porch columns and porch furniture, and stuff of that sort which he always made here and never purchased anywhere else. He was neutral in the matter and it did not affect him materially.

Mr. Lockwood bitterly opposed it and Mr. Olson also opposed it. I think Mr. Root stated that all it would affect him would be on his purchase of doors and heretofore he only bought his standord or stock doors and not so much of that. He was pretty much in the same class of Dierssen; most of his stuff was special and he manufactured the major portion of his stuff at all times. I don't know whether Mr. Stevens spoke on the subject or Mr. DeSwarte, but if Mr. Stevens did his line was similar to Mr. DeSwarte; they represent the same company. Traeger's line of talk was just like his partner, Dick, of the Dick & Traeger Company. Stewart was opposed to it and said so in most vehement language.

Reynolds, Morris, and I told them that was all nonsense and we had nothing to do with it and by the very nature of things could not have had anything to do with it; that for years this is a matter that the unions had attempting to force and it had been their
342 policy for many years and they got away with it this year and we could not help it and that we had had to keep our business accordingly and that was all. I remember Morris likening it to the way in which we had been forced to unionize heretofore. He said that the source of supply was not so limited as they might think and there were union factories all over the country and that if these other mills who had been unionized at that time wished to retain the Chicago market, they could easily unionize and avail themselves of this market and some of them did, he said. I don't mean to say that he said that, but some later did, I know. He said: "Why don't you remember some 18 or 20 years back this is the very manner in which we ourselves were forced to accept the union principal in our factories when the carpenters refused to put up stuff unless made by union men and we had to unionize. It was the very same principal involved at that time." I remember now that he stated that. At that time I told the members of our association that we had agreed to recommend the trade discount if Doyle would agree to recommend that his members change Article III in the way then demanded by Brimms and I told them the reason. I told them that I told Mr. Doyle we would recommend these articles if he would make peace with the union and not subject this industry to a

strike which would result in a shut down for our factory and again result in serious losses. I told them I had stated to Mr. Doyle: "Go as far as yielding to this article if you have to, but whatever you do don't let a strike tie up the work." That is exactly what I told the whole meeting.

I don't remember what they said; there was so much excitement and they still thought that there was something that should have been done to have prevented it in the form it was, and we had nothing to do with it.

I think we were accused of having engineered this deal in our own interests so as to sell to the balance of them. I don't remember who it was who made the accusation; it was largely insinuation and stuff like that. I recall Dietsch telling me either at the meeting or outside of it: "You fellows certainly put one over on the rest of us."

I remember the witness Dodd saying that Reynolds, Morris, and I spoke in favor of Article III at one of these meetings. I did not speak in favor of it. We said that, after all, "What is going
343 to be the ultimate effect of this thing? It is not going to be so serious as you fellows think it is. The total supply of standard stuff coming in here is nothing compared with the stock manufactured here and it is not going to be as much trouble as you think. You are magnifying it and it is all bunk." He may have gotten the idea that we were in favor of it by reason of saying those things. He was bitterly opposed to it.

Perhaps the next meeting of Division G after this one of April 19th was along about the middle of May. As shown in the minutes it was May 13th. Substantially the same people were present. The minutes show who were there. I don't remember clearly whether the meeting of May 13th was the one in which Mr. Reynolds made the report on some negotiations with the engineers' union. I do not think there was anything brought up in that meeting about a new agreement with the teamsters' union. That probably came at a later one. If that was the meeting where Reynolds spoke about the engineers' matter he reported that the engineers were demanding a new agreement. I think Mr. Lockwood, the chairman of the special committee to formulate a plan to employ a man to check up on materials in Chicago and to establish a bureau for that purpose, was appointed at a previous meeting. He reported at that meeting and after discussing the report it was the purpose of the meeting that no action be taken at that time. I think he was appointed at the meeting of April 19th and he was reporting on it. Mr. Lockwood had introduced the subject and was appointed chairman. His purpose was to engage a man to ride around and he mentioned the fact, "We will give him a motor cycle to ride around to the different jobs and ascertain whether or not nonunion stuff was being installed." That was his purpose of forming this bureau and engaging a man to do it. The purpose he explained of wanting that information was so that if it was found that the union was really installing nonunion-made material after all, why then that information would be of value to us

and to our own membership and we would proceed to go along in the same manner we had done before and still use nonunion-made material. That was the object of that investigation, if you may call it so.

I remember that it was suggested by Mr. Heitmann that we
344 obtain an opinion from Attorney Adams as to the legality of such a bureau. I don't know what Heitmann had in mind when he wanted to refer that to an attorney. We did refer nearly everything to an attorney. Anything we would refer to an attorney if it had any ear marks of something that might be hooked up, you know, we would refer it to an attorney. The agreement which we entered into with the trade relations committee, mill men's Exhibit No. 1, was referred to an attorney.

Q. The minutes then recite the question of entering into an agreement with the Carpenters' District Council was discussed as regards future sales to members of that organization. That means contractors, does it not?

A. Oh, yes.

It means carpenter contractors. I remember that Mr. Reynolds suggested that although the labor committee had, time and again, taken up this matter and finally arrived at what would be satisfactory to both parties, yet no action had been taken and he thought the labor committee had gone as far as they could and it was now a matter for consideration of the trade relations committee. Then the matter was presented to the association as far as this committee had gone with the contractors' committee and they referred it to the trade relations committee. I don't recall whether that was the meeting at which the trade relations committee was instructed to try and work out a basis of 5% trade and 2% cash discount.

The next meeting of Division G after May 13th was on May 21st. I think that at that meeting we reported that arrangement was under way for the use of this union-made material that was on hand and I think there was further discussion on this proposed agreement with the contractors' association. In the meantime we had been over to see Brims about getting the union to handle nonunion material already on hand or that had been ordered. We had a session with the arbitration board, if I remember it right, and we told these gentlemen what position we were in in regard to our stocks of standard material and that we wanted some arrangement made whereby these stocks could be used, not only the stocks on hand, but also the stocks that were on order and not yet shipped in. It was necessary
to have this installed because orders had been placed by some
345 of our members in good faith for delivery and some of those goods were coming in. We told these gentlemen that it would be unfair to have them suffer any losses by reason of their contracts with the contractors, and they said that they thought that was quite a fair demand; that they did not want to work any hardship on anybody and they wanted us to get a square deal and they would make a satisfactory arrangement so that the goods would be used. They

did this. They adopted the O. K. stamp and all these goods were stamped with the O. K. stamp. Mr. Brims described that correctly.

The same old stuff was repeated at the meeting of May 21st about the trade discount. Everybody talked on it and we agreed that the contractors were entitled to some correction of abuses; that they thought were abuses, like the first article, and the question was simply as to the amount of the discount. We felt that inasmuch as they were all good big customers and making as much as they said, and 90 per cent of our sales were to them, that they were entitled to something and the discussion was almost entirely upon the question of a discount and our membership thought 15 per cent to the trade and 5 cash was too much and they wanted it cut down to five and two. We told them that we had been asking for a long while and arguing with them to get them down from 25 and 5 per cent to 15 and 5 per cent and they thought that 15 and 5 per cent was too high. They told me at a later meeting they were distinctly instructed to go to the contractors and formulate a deal on the basis of 5 per cent trade and 2 per cent cash discount. The following action was taken as shown in the minutes of that meeting: After the matter was fully discussed it was the concensus of the meeting that the trade relations committee be instructed to work on the following basis of an agreement between the two organizations. First it was requested that the mill men will not submit, etc.

Second: Give all members of the contractors' association on estimated prices a trade discount of five per cent and to contractors who pay eighty-five per cent of the mill work as delivered on or before the 19th of each month following, a cash discount of two per cent.

I think there were some there who were opposed to the giving of a discount entirely, but the majority voted for this five
346 and two per cent. My recollection is that it was largely those fellows who were in the outlying parts of the city and who dealt in other commodities than mill work who were opposed to giving any discount; those who sold lumber and coal and things of that sort. They thought that any arrangement of this type would be confusing in their accounting and bookkeeping system because on their lumber sales or on their coal sales these rates of discount would not apply and they would have to keep a separate set of books for their mill work sales, if this discount went into effect and they didn't want any such confusion on their books and records and they were opposed to it entirely.

I think Mr. Irvine, Mr. Beck, and Mr. Collins were opposed to it. Dierssen, DeSwarte, Koll, Lockwood, Root, Olson, and Reynolds were in favor of it, and I think Nielson was. I do not think Mr. Anderson, of the Anderson & Lynn Co., voted at all. Mr. Rausch, of Bartlemann & Co., was in favor. I think Decker said that inasmuch as their sales to the contractors locally were so small he was not especially interested. I don't remember whether he voted on it or not. Dreische and Heitmann were opposed and Morris and Westburg in favor of it. Stewart and Dickinson and Mr. Dodd

were opposed and Mr. Traeger in favor, and they all expressed themselves in the manner in which I have indicated. I think the next meeting of Division G after May 21st was in June, June 10th, I think, and the minutes show who were present at that meeting. It was at that meeting that we made our report of our conference with Mr. Doyle on that day which I have already explained.

I don't think there was very much discussion at this meeting about the trade discount. When I told the meeting that Mr. Doyle had said he would like to come over and present his matter to our association himself, I think there was no more discussion. I don't know whether there was a motion passed or some resolution passed but at any rate it was the concensus of the meeting that he be invited, together with his committee, or any other gentleman from his association, who wished to come over and present this matter.

The next meeting of Division G in 1918 after June 10th was about two weeks later, about June 24th and the minutes indicate who were present. I remember Mr. Reynolds making the statement shown in the following minutes:

347 "Meeting was called to order by Mr. T. E. Reynolds in the absence of the chairman, and he explained the labor committee meeting with the Carpenter Contractors' Association, stating that all acts as set forth in the contract would be presented by the trades relations committee, of the Carpenter Contractors' Association, and had been approved, and signed by the labor committee in accordance with the authority of the meeting of Division G, before the aforesaid contract had been entered into."

I don't remember what happened when Mr. Reynolds made that statement. I don't know that any authority was ever issued by a meeting of Division G to approve the contracts which would be presented by the trades relations committee with the Carpenters Contractors' Association. I think we immediately disputed the statement. I am quite sure I would at the time. There had never been any authority issued by the division for making this agreement. It had been a committee agreement all along, and it had been signed by the labor committee, but that is all. It had never been passed upon by our division.

This is the meeting which Mr. Green and Mr. Doyle addressed. As to Mr. Doyle and Mr. Green I think one talked as much as the other, and Mr. Doyle started off, at least, and he went over the same talk that he had been giving us right straight along in the committees on these trade abuses, dwelling principally, however, upon the discount matter, and he said that his membership and his contractors, were the big customers of the mills and should be classified as wholesalers and given a preferential rate as such over the others. He said that 15 per cent trade and five for cash was what they wanted and what the committee had agreed upon and that they were now in a position where they ought to have it. He said his organization had been greatly increased in members by reason of the fact that this discount had been promised them. You understand he had the

notion all this time that this discount, if ever authorized by our division, should run only to members of his association and not to nonmembers of it. That was what he wanted all the time. His talk in these meetings was along those lines. He didn't dwell upon the other items very long because we had told him that our as-
348 sociation was satisfied with those, and they were fair and would grant them. His argument was almost entirely upon discount.

Mr. Green stated substantially the same thing; he just followed up and corroborated all of the arguments that Doyle made and reiterated them. I think after these gentlemen had fully told us all they wanted our membership to know we thanked them for having presented their case and said we would excuse them and take the matter up ourselves. And that is what we did. There had been much discussion; there were those opposed and those in favor and the amount was still questioned by a great many. Reynolds, Morris, and I having been committed to recommend the 15 and 5 per cent, kept speaking in favor of that, and almost everybody else said that was too much.

It was brought out in the discussion that it was the concensus of the meeting that if any discount was ever granted, the amount not having been determined at the time, it should run to all contractors, whether members of the association or not. I think that all of those who were in favor of the discount at all were in favor of having it run to all contractors and so expressed themselves.

At the meeting of May 3, 1918, Mr. Bartuska, of the California Manufacturing Company, opposed the giving of a trade discount. He was also opposed to the change in Article III.

The next meeting after June 24 was a few days after that one and I think I attended that meeting. So far as I recollect the minutes of that meeting are correct. I know the next meeting was a long time after, five or six months, and if the minutes so state, it was on December 17th. I was present at that meeting and the minutes are substantially correct. The next meeting was March 7, 1919, and I believe I was present at the meeting. The minutes of that meeting are substantially correct. The next meeting was March 18, 1919, at which we adopted the resolution for the trade discount to the contractors, extending it to all carpenters contractors in Cook County. The minutes of that meeting are substantially correct.

This was the first time that our association ever made any agreement as to trade discount or anything else with the Carpenters Contractors' Association. In making this agreement our members were in no way influenced by the consideration that Article III had
349 been changed. That was a matter that had been done a year ago. We were not influenced at all by any feeling of obligation to make this contract by reason of the fact that the carpenter contractors had yielded to the demands of the carpenters and incorporated in their agreement with the carpenters the provision, "There shall be no restriction upon manufactured material except nonunion and prison made." I only know the extent to which they were influenced from what they said at the time.

Stipulation entered into by the parties that the minutes of the meeting of January 20, 1920, show the following:

"General discussion of interest to the members ensued and the following resolution was presented and carried:

"'Resolved, that the mills be notified that they make a list in duplicate of all O. K.'d material on hand still to be disposed of, and send such list to the secretary so that he may turn it over to the labor committee. There being no further business, the meeting adjourned.'"

That resolution had reference to the nonunion-made material that was on hand in the spring of 1918 which had been O. K.'d by the union. My recollection is that the union men thought that the time was rather long in which that stuff was still being used; it should have been consumed within a year or less from the time that it was first O.K.'d and they were desirous to know how much of it was still on hand, and therefore called for a list by our members, to be prepared by our members who still had this material on hand, that they might know about how much was yet to come.

The members present said that they still had large quantities of it on hand and they could not help the fact that they still had it; that the demand had not been as great as was expected for this type of standard stock goods; that they could not force the sale of it and they expected to use it no matter how long it took.

I think the trade discount to the carpenter contractors became effective May 1st, 1919. The giving of the discount did not result in any material benefit to the carpenters nor to ourselves, because the method of making up our proposals was such that on the face of it it would show that the price was subject to the discount and therefore the net price would be right there; furthermore, the
350 contractors, or members of the association who had expected originally that this should run only to their members, were not benefited by it, because when we finally ratified it in our association, one of the exceptions was that it should run to all contractors, whether members of the contractors' association or not, and therefore it did not result in any material benefit to the members of the contractors' association. As a matter of fact, we quoted the general public precisely the same figures that we quoted the carpenter contractors.

As to the refusal by the journeymen carpenters to handle nonunion-made material, there had always been a certain amount of that back many years, but beginning after the spring of 1918 the refusal to work on nonunion-made material was quite universal. In our own business we made a delivery one day of a wagon load of window sash and through some oversight in our factory, they were not stamped with the union label. We were notified by the contractor that the sash was on the job and were not union sash and therefore his men would not handle them. I took it up with the union officials at once over the telephone and told one of the business agents

that this load of sash was over on the job and it was from our factory. I asked him not to put us to any special trouble, that they were union sash and to let them go through. He said: "No, we can not do that. One of our working rules is that the stuff must bear the label." I said: "I will send our steward over with the label; pay him his time and let him stamp them." He said: "No, that won't do, either." I said: "What do you want me to do?" "Hold them back, stamp them properly in your factory, send them over to this job and we will put them in." We had to do that. So far as I know there was no discrimination by the union in favor of certain people and so far as I know the union did not allow any non-union material.

I know that I am charged with having offered to employ as such inside men only carpenters and joiners who were members of said organization if the carpenters would refuse to install any outside or nonunion-made material. I never made such an offer. There was no such offer. Our contract with the union provides that we shall employ only members of the union; that provision has been going on in our contract for a matter of twenty years. The fact that we had agreed to employ only members of the union had
351 no relation whatever to the action of the union in demanding a change in Article III.

We did not offer to increase the wages of our employees if the union would insist upon a change in Article III. Our agreement with the union had been made long before the contract between the union and the contractors in which Article III appeared. Our agreement to increase the wages of our employees was in no way based upon or dependent upon the union making an effort to secure a change in Article III.

The efforts of the union to secure a change in Article III did not form any part of the consideration for our agreeing to employ only union men and to increase their wages.

I know that I am charged with having induced carpenters to handle non-union-made material. So far as I know, neither I, nor any member of the labor committee, nor any member of our association ever did anything to induce or influence carpenters, to refuse to handle non-union-made material.

I am familiar with the allegation in the indictment that by reason of the change in Article III, foreign mills had been unable to sell in Chicago any appreciable quantities of building material and it is not true, because they could have enjoyed the same business in Chicago as they had prior to this time if they had unionized their mills, and some of them did.

I am familiar with the allegation in the indictment that foreign manufacturers had been unable to deliver in Chicago any appreciable quantity of their material and it is not true.

I am familiar with the allegations in the indictment that by reason of a change in Article III foreign manufacturers had been compelled

to forego carrying on such interstate trade and commerce so far as the city of Chicago has been concerned, and it is not true.

I am familiar with the allegation charging me with a purpose to monopolize the business of supplying such builders and building contractors in Chicago with such building material, and it is not true. I never had any purpose to monopolize the business of selling material which I manufactured to building contractors in Chicago and I know of no way I could have done it. I could not have established a monopoly for myself by bringi about refusals of
352 the unions to handle non-union-made material. There is plenty of union-made material all over the country that could have been brought in.

I am familiar with the charge in the indictment that I had the purpose to secure an excessive price for our own building material, and it is not true. I don't think I ever charged excessive prices for building material. I think my prices compare very favorably with others, even with the outside people; even with the Payne Lumber Company.

I am familiar with the charge in the indicement that I have unlawfully engaged in a conspiracy with the members of our association and with certain contractors and members of the union in restraint of trade and commerce among the several States of the Union, and it is not true. I never engaged in a combination or conspiracy to restrain trade or commerce. Any purpose or intent to interfere with or restrain interstate trade or commerce of so-called foreign, nonunion manufacturers was farthest from my mind. I knew all that they would have to do if they desired commerce with Chicago and Cook County was to unionize their mills and they could have enjoyed the same commerce they had prior to that time.

I had no purpose or intent in any agreement with Doyle and his committee to violate the Sherman Act. I have never consciously violated any of the laws of my country.

Q. What was your opinion as to the legality of this agreement which your committee made with the trade relations committee of the carpenter contractor embodied in the mill men's Exhibit No. 1?

Objection; objection sustained; exception on behalf of all the defendants.

Q. On what did you base this opinion?

Objection; objection sustained; exception on behalf of all the defendants.

Cross-examination by Mr. Fowler

I am unable to say who the labor man was who stopped the installation of our material. The contractor called up and said that the goods were on his job and the men could not handle them because they were not stamped. I called up the union office and asked for someone in authority there. The gentleman I talked with was
353 one of the three business agents on the inside. I think it was Bromley, Dusack, and Whitman who were the business

agents. There may have been another, Lorris; it was one of those; I am not sure which. He stated that they would not permit any nonunion goods to be installed; that it was one of their working rules and they could not handle the stuff unless it bore the label. He required us to take our stuff back to the factory before he would permit it to be installed. This was probably the latter part of 1919 or the early part of 1920. That is the only instance of the kind that came under my observation and the only trouble I had. On all other occasions our goods were stamped.

Our concern is capitalized at $100,000 and the stock is equally owned by me and my brother. In 1917 and 1918 we did about $350,000 of work a year. The estimated capacity of our mill was $300,000. We did not manufacture all the stuff that we sold. We manufactured our windows, but not all of our doors. We made all our window frames and baseboards. We manufactured everything we sold except some of the standard or stock doors, which we bought from the outside. Prior to 1918 we bought them from anybody, Payne, McMillan, the Hardwood Products, and many others. After 1918 we bought very little; we made them ourselves. We installed additional machinery in order that we might make those doors.

Q. Isn't it a fact, Mr. Rinn, that you installed that machinery at an expense of $35,000?

A. During the summer of 1918.

We installed it very shortly after this Article III went into effect during July or August of that summer. We installed it for the reason that we wanted to have union doors to be used in this market. The reason we installed that new machinery was because of the change in Article III and in order to comply with Article III; to put ourselves in an attitude to furnish the goods required under Article III.

I stated that there were about 85 to 87, possibly 100, mills in Chicago that were engaged in manufacturing inside trim, 37 of whom were members of our association. Those 37 manufactured 70 to 75 per cent of the inside trim that was manufactured in Chicago.

354 No, I don't beleve they did. I think these mills in Chicago manufactured 80 to 90 per cent of the total. I did not understand your question. I should say that it was a fact that the members of our association manufactured some 80 per cent of the goods of that kind that were manufactured in Chicago—not that were used in Chicago, but were manufactured in Chicago. Some of the other mills were small and others were engaged largely in other lines of business. A good many of our 37 mills were engaged almost entirely in mill work. A number of members were also in the lumber business and some even in the coal business. Mill work was a sort of a side line with them. I think there were other concerns besides Mr. Beck's in the coal business.

There were a number of mills on the outside shipping mill work in here that was nonunion; I do not know how many. I presume I have seen the list that has been read in the presence of the jury set

out on page 2 of the indictment, but I would like to be refreshed on it. I know the Payne Lumber Co., of Os'kosh; the Morgan Company, of Oskhosh; the Gould Manufacturing Company, Oskhosh; the R. MacMillan Company, of Oshkosh; the Radford Wright Company, Oshkosh; Conway Company, of Milwaukee; Mathews Brothers Manufacturing Company, of Milwaukee; the Moore & Galloway Lumber Company, of Fon du Lac; the Curtis Company, of Clinton, Iowa; Farley & Loeschner Manufacturing Company, of Dubuque, Iowa; Roach & Muster Company, Muscatine, Iowa; the American Sash & Door Company, St. Louis; and Raddis Lumber & Veneer Company, Marshfield, Wisconsin. They are not all nonunion mills. Conway and Mathews was a union mill. The Mathews Company, of Milwaukee, and the Conway also. I do not know how much of a business they had in Chicago. Out of the list they are the only two that I know to be union mills. Payne, which was a large concern, was not. MacMillan was a large concern which was nonunion. I think these mills were shipping a great deal of stuff into Chicago. A small amount of material they shipped directly to contractors and builders and a small amount was distributed through scalpers and through some other lumber yard. Quite a little was distributed through the millmen. The mill owners on the inside who were not manufacturing their own material would buy it from the outside. I think the principal purchases from any of those concerns were stock doors. I purchased some stock doors and aside from
355 that I don't know of any. I should say that not to exceed 40 per cent of the doors used in Chicago were shipped in from outside of Illinois. At the time Article III went into effect very few of us in Chicago were making stock doors; not to exceed 35 or 40 per cent of the doors used in Chicago were stock doors. I don't think over 30 per cent of the doors used in Chicago were what was known as stock doors and of that 30 per cent from 20 to 25 per cent was manufactured here, and about 75 to 80 per cent was shipped in here from the outside.

I think in 1918 the only concern of any consequence in Chicago who were manufacturing stock doors in any quantity was William Morris & Sons. I do not believe that the Union Interior Trim manufactured what would be known as stock doors. Their stuff was almost entirely special. After 1918 we manufactured our own.

I want to supplement the answer I made a few moments ago when you asked me about this new equipment. It was really throwing out some obsolete machinery and building a little addition and putting in a little bit more modern machinery. It was not entirely for the purpose of making stock doors but it permitted us to manufacture all special doors more economically and after that time we manufactured most of our stuff.

The Union Interior Trim and the Morris concern had been manufacturing all of its material for some time.

I do not know what per cent of windows were shipped in here from outside of Illinois; we do not buy windows—we make our own

and made them all the time. I believe the Union Interior Trim made its windows. Morris handles windows and makes it own. A large per cent of the other material, like picture moulding and stuff of that kind was manufactured in Chicago. I always had the opinion that most all of the interior trim of that character was manufactured in Chicago. I never bought any of it and I never knew of anybody else buying it. I do not know about it of my own knowledge. Whatever there was must have been small; most of that stuff would be manufactured locally. Possibly the carpenters would know more about that than I do.

It was not in 1916 that we had a loss in our business. I think we broke even in 1915, whatever those figures were. In 1915 I think we were in the red. In 1915 my salary was $5,000 a year and my brother's was the same. It was the same for both of us in
356 1916. In 1917 I think we made about $1,000 and my brother and my salary was the same that year—$5,000. In 1918 I think we made a profit of $2,000 and our salaries were the same. In 1919 I think we made about $3,300 and our salaries were the same. I think our net profits in 1920 was $45,000. I don't think I have missed it $10,000 or $11,000. Forty-four nine, if I remember the figure correctly. That year our salary was $10,000 each; that is, the salaries of the two of us was $20,000. Our profit in 1921, I think, was rather low, $2,500 to $3,000, something like that, and our salaries had been reduced back to $5,000 each.

1920 was a bad business year—only 60 to 70 per cent normal. We did the volume of business in dollars that year and it was about 60 or 70 per cent normal in quantity of material handled. Yesterday when I was asked the question: "Has there been any effort on the part of the mill men in Chicago, so far as you know, to get together and maintain prices and divide up the business?" I answered "No."

I remember something about some consideration in 1917 and on during 1919 of a plan whereby we were to divide up business between us, each one having assigned to him a certain amount of the business and each one of us to furnish a statement as to our capacity. We were looking into it. I don't recall that any statement were submitted. It was known by the expression "allotment plan" something of that sort. We were looking into it. We understood and knew some other industries were doing that and we considered it. I presume we furnished them with information as to what our capacity was. When I testified yesterday as to the capacity of several factories, I did not get my information from the paper that was prepared at that time. That is so long ago that those figures I have not in mind at all. I don't remember seeing the figures. I do not remember whether I have seen the paper which purports to contain the capacity or volume of business done by each of the members of our association which you have just handed me. I am not familiar with the handwriting of Mr. Traeger sufficiently to recognize it. I do not know the handwriting on the paper which you have handed me

and I do not know who wrote it. I do not know whether the plan contemplated all of us paying in a certain amount of money and making a fund that could be drawn from in order to reim-
357 burse those that had not done their pro rata of business and whether it required those that had done more in their business to contribute to that fund. I don't recall the details of that plan. I did not give it very much attention.

It was at no time under consideration in Division G. I think there were a couple of us that talked about it but nothing ever came of it. I remember Mr. Claude E. Flambeau, of the Milwaukee Mill Work Bureau, and that the minutes of the meeting of Division G of October 18, 1917, shows that Mr. Flambeau addressed the meeting and also Mr. Robert Brown and the managers of bureaus in St. Louis and Atlanta, who explained what they were trying to do in their respective localities. That discussion was not in regard to this allotment matter but was an entirely different matter. I do not believe that Mr. Keene was ever in one of our meetings. I have no recollection of his ever addressing the meeting. I know him and he is here in the city of Chicago.

I do not remember this paper which you show me which is designated as a rough draft and begins thus: "We, the undersigned, engaged in the business of manufacturing and selling mill work in the city of Chicago, and vicinity have formed ourselves into an association for the purpose herein stated, and hereby enter into and bind ourselves by the following:" I do not remember anything like that or a similar import, but I do remember the plan we talked about. That was not the matter which was referred to in the minutes of May 20, 1919, which reads as follows: "The chairman introduced Mr. W. P. Flint, secretary, and Mr. H. D. Didesch, assistant secretary of the Mill Work Cost Information Bureau, and who fully explained what the bureau could do in working out the actual cost of manufacturing all kinds of mill work, and distributed a cost list of manufacturing mouldings, taking it up item by item and showing how they arrived at the actual cost of producing moulding.

"Resolved, that a roll call be taken to ascertain how many persons will become members of the Mill Work Cost Information Bureau.

"Carried.

"On roll thirteen members signed an application for membership in the bureau, seven having been members for sometime and three not signing, as they did not have authority from their firm, who undoubtedly will sign."

358 This matter here by Flint and Diedisch is entirely disassociated from the other. We were all to adopt the same system of cost finding and we individually joined this cost information bureau. The conditions surrounding the market were changing so rapidly, especially with reference to the cost of raw material, that we were more or less at sea and we had appointed a market committee on market conditions to keep us informed as to what the markets were on raw materials, when we learned of this Mill Work

Cost Information Bureau, an organization that had been in existence for some time and is a national organization. I believe all these complainants that you have read to me before are members of it, I mean these members of these foreign mills, I can not call them by their right names. This bureau maintained an office in Chicago and gave to its subscribers the results of actual tests made in factories from time to time as to what certain articles cost to manufacture, and that was distributed nationally. We all joined this bureau, not all, just the number that is mentioned, which I presume is the correct number of members. All those of us who joined the bureau received its daily and weekly reports as they issued them. What use each concern made of these papers I do not know. I know what we did.

I have seen mill men's Exhibit I and have read it right here. I never saw this one before but I have seen a copy. I read it before it was ever signed. It was not gotten up at my instance. Part of it was the result of my talk with old man Doyle. This paper was partly prepared by Doyle and his committee. One, two, and three, when we came to meet them the second time. Four. also. I think we put in number five and the contractors put in number six.

Number five reads: "In your agreement with the carpenters' district council, article 3 to read: "There shall be no prison-made material used." "Your" refer[illegible] the agreement between the contractors and the union. Th[illegible]eement was to have that provision in it that I mentioned in fi[illegible]

Q. And you and Mr. D[illegible]e had talked that matter over before it was prepared?

A. We were all right there together around the table.

We were all talking it over. Mr. Reynolds and Mr. Morris were there. I am not sure if anyone else was there from our organi-
359 zation. Mr. Olson may have been, being our chairman; he sometimes came to the committee meetings. I think I have explained why we talked this article 5 I may have been the author of article 5—one of the mill men was The object of that article 5 was not to eliminate article 3 from the contract. The object of it was that Doyle's arbitration board make an agreement with the union. That was what we were more anxious for than anything else.

Q. You know if that understanding that you agreed upon right then and there was carried out, it would eliminate article 3 from the union agreement with the contractors, wouldn't it?

A. I know it would be worded this way if it had been carried out.

Q. Don't you know it would eliminate in effect that article 3 from the agreement?

A. It did not eliminate. This article was still in in a changed form.

I knew that it would untie the union's hands absolutely and that was what it was put in there for in order to enable the union to refuse to work on nonunion-made goods. I knew that was to be in there

for that purpose. I did not suggest that it be put in there in order to have that effect. I did not put it in there for that purpose. That was the general opinion that that would be the effect of it, and I knew it would have that effect. I knew that the union had been trying for years to have that article eliminated. I knew their purpose was to refuse to work on nonunion-made material. I do not know whether they had told us that or not. I had not talked with the union men at that time, but three years prior. This matter of their policy to refuse to work on non-union-made material was well known for a period of twenty years and I knew it. The matter came up year after year at the expiration of every agreement so that at this particular time we knew exactly what they were wanting to do and we knew that they would only work on union-made goods. I knew that during that period nonunion-made goods were shipped in here, much of them, many of them. My recollection was that the Payne Lumber Company testified that they made immense shipments during that period.

I knew that it was the union policy to refuse to work on nonunion-made goods whether made locally by nonunion men or shipped
360 in, so that if nonunion-made goods were shipped in here it was their policy not to work on them. I knew that.

At that time there were no nonunion-made goods being made in Chicago other than by Anderson & Lind and Nollau and Wolff. Nollau & Wolff were unionized about that time and that left only Anderson & Lind on the outside. The discount question was one of the matters under consideration at that very time and being discussed by our committee and Mr. Doyle's committee. The discussion had under consideration other propositions in that agreement and they were all considered together. The discount was not exactly voted because of our understanding with the committee at that time. Our association turned this whole proposition, down, you know, but eventually they granted the discount and the correction of the trade abuses because the contractors were our wholesale customers and that was the principal reason.

I would not say that Mr. Reynolds and Mr. Morris and I and another one or two were the real cause of putting that through our Division G. The division practically saw that it was the right thing for it to do. We had committed ourselves to advocate it and we did so, and there was pretty strong opposition to it. It was finally voted. I do not think it was voted because of any obligations that we had made or imposed upon ourselves and upon our organization to the contractors' association. We were advocating it because we had agreed to do so.

I stated to the jury yesterday that in allowing that discount it was our purpose to add that much more to the bill and then subtract it. That did no good to anybody. It would have confused matters if we had made the agreement as to the discount with the association members alone. It would give the members of the association an

actual advantage unless we were to allow the discount to all of them, that is, if we would quote to others than members of the contractors' association the full gross price, but that was not the manner in which it was done at all. In order to avoid that trouble, we included everybody in the discount. We just added the amount of the discount to our bills and then cut it off and then brought it back to the old quotation so that neither the public nor the contractors ever got any advantage from it at all. I would not say that it was just a kind of camouflage. Take for illustration a bill
361 of goods that we would want to sell for $800, say. That would be the amount that we would expect to get for it. We would sell it to anybody for that amount of money. If the bid after this agreement was made with the contractors' association was on such a bill, the quoted price would be $1,000, and it was our custom to say right in the bid that this price was subject to a trade discount of 15 per cent and a further discount of 5 per cent. Now, when these two items of 20 per cent are deducted from the 1,000, we are back to the $800. If it were somebody who was not a contractor, we would quote them $800.

Cross-examination by Mr. McKinley

I knew Mr. Adams, who rendered the opinion that accompanied that statement, very well. He had been for a long number of years attorney for the Lumbermen's Association, of which Division G is a part. Mr. Root, who was at that time chairman of our trade relations committtee, sent a copy of millmen's Exhibit I to his office, I think it came back from his office to ours and then through us to the contractors. I do not know where the actual typewriting of that instrument was done.

Redirect examination by Mr. Fink

This allotment plan that was spoken of was not carried out by the Lumbermen's Association of Chicago. That is a separate organization, as I understand it. I think the name is the Chicago Retail Lumber Dealers' Association. That is the same plan that was carried on by that association. I do not know whether that was the plan that was investigated by the secretary of the State of Illinois and for which he issued a charter to the Lumbermen's Dealers. We did not do anything about this allotment plan. When I testified that millmen's Exhibit I was sent to Mr. Adams's office by Root, I thought you had reference to the final agreement made with the contractors' association by the two associations. I did not know that you had reference to this memorandum paper. I think millmen's Exhibit I was handed to Mr. Adams by Mr. Reynolds.

362 THOMAS E. REYNOLDS testified on behalf of the defendants.

Direct examination by Mr. Fink

My name is Thomas E. Reynolds and I am 57 years old. I am in the sash, door, blind, and interior finish business and am one of the defendants in this case. I was born on a farm in Michigan, near Ypsilanti, and when a boy about four years old my people moved to a farm near Grand Rapids. Three of four years later they moved to a farm near Hastings, Michigan. A few years later they moved to the city of Hastings, where I went to school as a boy and finished my schooling in the high school of Hastings at the age of 19. At that time there was a concern in Hastings, A. G. Spaulding Manufacturing Company, sporting goods. They had a factory there in which I worked, in the fall of 1885. August of 1886 the factory burned and I came to Chicago with them, where they started a factory at the present site of our factory.

I worked for them for several years and finally went into this business as an order clerk for W. F. Peterson Company at a wage of $2.00 a day at that time. I was married at that time and had two children.

Later I worked for Peterson about three years, I think it was in 1895 or 1896; we bought the property of the Hazen and Brinn Concern, which had a factory; they had bought this old factory from Spaulding and we bought it from Hazen and Brinn and we started our present company.

My brother-in-law, Mr. Workmeister, and Harrison and McGimsie, a firm of contractors.

We started in in a very small way and about twelve or thirteen years after we started in business our frame factory burned and we lost everything we had; the insurance turned out to be wildcat insurance and we lost practically everything be had.

We borrowed money and built our present factory, one of our present buildings, 90 x 110. Later we built another building, 65 x 100 and later be built another building, 50 x 100.

We did not increase the capacity of our factory after arti-
363 cle 3 was changed. The name of my concern is the Union Interior Finish Company, and it is capitalized at $35,000. Thirteen shares are held by the superintendent of our factory and the balance is divided into sixths. I hold one-sixth, Workmeister holds one-sixth, McGimsie holds two-sixths, and Miss Harris holds two-sixths. I have the capacity of our plant and production as measured in dollars in 1917 and 1918 as it was taken off of our books. I do not like to depend upon my memory for that. Our production in 1905 was $178,297; in 1916, $311,179; in 1917, $313,026; in 1918, $233,895; in 1919, $302,330; in 1920, $718,373.

The net profits I can state. In 1915 we had a loss of $7,852.14; in 1916 we had a profit of $19,699.33; in 1917 there is a profit of $19,296.29; in 1918 there was a profit of $1,303.68; in 1919 there was a profit of $15,662.40; and in 1920 there was a profit of $54,169.03. Our invested capital during that period ranged from $150,000 to

$180,000 a year. When running at a maximum we employ 150 to 175 men.

I heard Mr. Rinn testify as to the mill business and conditions in Chicago. He stated that matter according to my recollection and understanding of it. I heard Mr. Rinn testify with reference to the circumstances and the manner under which he was compelled to unionize and run a closed shop, and my experience was similar to that. I went through the same op'rations.

Upon objection by Mr. Fowler to the word "compelled," on the ground that a man can not be compelled to do anything, it was changed to did.

I heard Mr. Rinn describe the competitive condition which existed in Chicago so far as the manufacture and sale of mill work was concerned during the years 1917, 1918, 1919, and 1920, inclusive, and his statements were correct. I also heard Mr. Rinn testify with reference to the relations that existed between the outside foreign nonunion mills and the Chicago millmen as to the Chicago millmen being the customers of the outside mills and that is correct.

We first had negotiations with a committee of the journeymen carpenters with reference to the new agreement which was to take effect sometime in the year 1918 in the latter part of December, 1917. I heard Mr. Rinn testify with reference to where those negotiations occurred and who were present and he stated what was said
364 accurately, according to my recollections. We had the second conference with Mr. Brimms and his committee with reference to the new contract to take effect in the year 1918 about the sixth, seventh, or eighth of March, 1918. I have a particular reason for being able to fix that precise date now because on the fifth of March there was a meeting of Division G where the labor committee, Rinn, Morris, and myself were given authority to make an agreement with the labor unions and soon after that we met a committee from the labor unions and made our agreement a day or two afterward. I heard Mr. Rinn's testimony with reference to what was said and done in this second meeting between the two committees and he stated the matter according to my recollection. In neither of these two meetings was article 3 mentioned.

I remember when we had the first meeting between the committee and a committee of the carpenter contractors with reference to a trade discount and the correction of certain trade abuses. It was early in January, 1918. I heard Mr. Rinn's testimony as to what occurred in that meeting and he stated it correctly according to my recollection.

Our next meeting with a committee with the carpenter contractors with reference to a trade discount and the correction of certain trade abuses about the 10th or 11th of March, 1918. That was after our second conference with Mr. Brimms and his committee. I heard Mr. Rinn detail what was said and done in that second conference and he stated it correctly.

At this second conference with Mr. Doyle and his committee, Mr. Doyle came with a paper prepared. He had a memorandum on a paper with three or four paragraphs, I believe it was four. I heard Mr. Rinn testify with reference to how the fourth and fifth paragraph got into mill men's Exhibit I which has been introduced here and he stated it correctly. After the suggestions of the fourth and fifth paragraphs had been written in in long hand, Mr. Doyle took it away to have it rewritten and the next time I saw a paper similar to mill men's Exhibit I which was introduced in evidence, I saw it at the association room of the Lumbermen's Association. I was called down there by Mr. Hooper, secretary of the association, to sign this paper. Morris and I signed it. I did not see the paper again until it was introduced here as evidence.

365 I referred that document to Mr. Adams, our attorney, for a legal opinion as to its legality. I took the paper to Mr. Adams myself and got the opinion upon it. I received an answer which has been introduced in evidence. The letter is addressed to me. In signing that document and in entering into an agreement with Mr. Doyle which Mr. Rinn testified he entered into at the second meeting of the two committees, my purpose was to keep our mills open and the business going in Chicago. I had no purpose whatever to interfere with, obstruct, or restrain interstate commerce.

I have heard Mr. Rinn's statement as to meetings of Division G which he attended and as to his relation to what occurred and what was said at the meetings, as shown by the minutes and they were correct.

I am familiar with the charge against me of having offered to employ as such inside men only carpenters and joiners who were members of such organization, if the carpenters would refuse to install any outside or nonunion-made material. That allegation is not true. I never made any such offer to the carpenters on my own behalf or on behalf of my association, and no such offer was accepted by the carpenters. The contract with the union provides that we shall employ only members of the union. That did not have anything to do with their refusing to install nonunion-made material. The fact that we agreed to employ only members of the union had no relation to the action of the union in demanding a change in article 3. We did not offer to increase the wages of our employes if the union would insist upon a change in article 3.

Q. What was your mental attitude towards the change in article 3 when Mr. Brimms was insisting upon it?

Objection; objection sustained; exception on behalf of all defendants.

There was no particular reason in my own business that induced me to take a position one way or another as *as* to a change in article 3. Such change in no way affected my own individual business, because our particular business was on residential work, churches, cabinet work, fixtures and work of that kind. We never at any time before or since used anything in the line of stock material during my

thirty years. If there was anything of that kind in a build-
366 ing, when we bid, we manufactured it. Sometimes basement doors, garage doors, and things of that kind. During my thirty years I have only bought one job of doors.

Our agreement to increase the wages of our employees was not in any way based upon or dependent upon the union making an effort to secure change in article 3. We had concluded our inside agreement with the union prior to the time the contractors agreed to the change in article 3. The efforts of the union to secure a change in article 3 did not form any part of the consideration for or agreement to the employing only of union men and to increase their wages.

I am familiar with the allegation charging me with having induced the carpenters to refuse to handle nonunion-made material. It is not true. So far as I know neither I nor any member of the labor committee nor any member of our association ever did anything to induce or influence the carpenters to refuse to handle nonunion-made material.

I am familiar with the allegation in the indictment charging me with the purpose to monopolize the business of supplying said builders and building contractors in Chicago with such building materials. It is not true. I never had any purpose to monopolize the buildings of selling material which we manufactured to the building contractors in Chicago.

I am familiar with the allegation in the indictment charging me with having a purpose to secure excessive prices for our own building material. It is not true. We never charged excessive prices for our own building material.

I am familiar with the charge in the indictment that I have unlawfully entered into a conspiracy with the members of my association and with certain contractors and members of the union in restraint of trade and commerce among the several states of the United States. It is not true.

Cross-examination by Mr. FOWLER:

We manufacture all the materials we sell and were doing that in
1918. All of our work is special work. There is only one outside mill doing special work with which I come into competition.
367 That was Henry Struck Company, of Louisville, Kentucky. Morgan & Company was not doing a lot of special work and shipping it in here, not a piece of it, that I know of, in my thirty years' experience. Mathews occasionally had shipped into Chicago. He is the only man that I know of that I came in competition with me, Mathews and Henry Struck. There were several others in Chicago engaged in special work. Of the fellows outside of Illinois Mathews was doing special work. He does not do any stock work either. Payne and Gould and all these fellows were doing stock work and shipping a great quantity of stuff in here.

Our company had a $35,000 capital stock. My salary was $5,000 in 1918. Our total salaries in that year were $10,000. Mr. Workmeister received the same. My salary in 1919 was $5,000. I do not think it was increased in 1919. It was increased during one of those years to $6,000 but I think it was in 1920. The total salaries for the two of us in 1919 was $10,000. It might have been $12,000. My salary was increased again in one of those years; it was increased to $8,000 in 1920. The total salaries in 1920 was $16,000. The total salaries in 1920 were not over $56,000. Our net profit in 1920 was not $150,000. It is as shown here on this paper and the books have been audited by the Government. If you want to see it, you can have it. The net profit as shown in 1920 was $54,169.03 and the salaries $16,000.

I knew there was such a law as the Sherman law. I know a lot more about it now than I did at that time.

As to my knowing what was going to happen if the hands of the labor union were untied, I had no way of knowing what was in the minds of the labor union or the men. The matter of refusing to work on any nonunion-made goods if their hands were untied was up to them. I might have thought that they intended to refuse to work on any nonunion-made goods, but I didn't know it. I thought it might be possible. I didn't necessarily believe it. That was not what induced us to insist upon that modification. I did not believe anything of that kind would happen. I was trying to avoid a strike, to avoid them tying everything up. Why they would tie everything up if they did not intend to refuse nonunion-made goods if their hands were untied was their business entirely.

I had nothing to do with it. I could not know what they were
368 going to do any more than anyone else. I knew what I though their attitude might be. I did not know what their attitude had been for that had not always been their attitude. I knew that if their hands were untied they had the privilege of refusing to work on nonunion-made material but I did not know that they would refuse. I did not personally believe that they would refuse. I believed this that if they were left in the attitude they could refuse as they saw fit. I did not particularly insist on the modification. I did not oppose the proposition but I didn't want the factory to close down as it had in 1916, when I lost $7,000 through the cause of it, and I thought that if there was a refusal of that being put in there the factory might be closed down. I did not necessarily expect it would be, but it might have been. I don't know if I believe it at that time or not. I thought we were in great danger of being closed down. I most assuredly had a state of mind about it. I was in danger if something was not done with article 3 so that the building business would go on.

I was not particularly insisting that old man Doyle should make a modification in that contract, Exhibit No. I of mill men's. Mr. Doyle was very willing to do this thing, you understand. Mr. Doyle had a lot of pride to get these things done.

Q. Mr. Rinn was mistaken when he says that Doyle, Mr. Doyle, and his contractors were going to refuse to modify article 3——

Objection; objection as assuming a state of facts not testified to by Mr. Rinn; objection overruled; exception on behalf of all defendants.

Mr. FOWLER:

Q. In regard to pride of opinion, the jury will remember what was said; I do not remember the exact words offhand.

The COURT. Go on.

Mr. FINK. Exception.

Exception on behalf of all defendants.

Mr. Rinn's testimony that the contractors were objecting to it was true, but Mr. Doyle was not objecting to it at any time. Mr. Doyle had one attitude and the others had another attitude. We were making that recommendation in order to keep our factories open. We did not do it in order to secure a modification of article 3. It was to secure a modification, of course, but the object was different than that you assume.

369 Q. It was to secure a modification of article 3; that is so, isn't it?

A. Yes, sir; it was modified.

Redirect examination by Mr. Fink

I said that it was for the purpose of keeping our factory going, noninterruption of business; everybody knows that.

There was no particular reason for the apparently large increase in profits during the year 1921. We did business of $718,783, which is as much again as we did in any other year with the same overhead.

Mr. FINK. I have an understanding with General Fowler that the record may show that if all these other defendants were called and sworn and testified as to the meetings which the minutes show they attended, as to what was said and occurred, that they would testify in substance and effect as has already been testified by Mr. Rinn; is that correct?

Q. Mr. FOWLER. That is correct.

Mr. FINK. And that applies to all the mill defendants?

Mr. FOWLER. That applies to everyone except certain ones, a list that I have given to Mr. Childs; certain ones that we will state to the jury hereafter.

Mr. FINK. That also may apply to Mr. Root?

Mr. FOWLER. Certainly; he was a mill man. Certainly.

Mr. THOMPSON. On behalf of the union defendants, whom I represent, I have agreed with Governor Fowler that those defendants who signed the inside agreement whose names have been put in evidence, if called, will testify the same as Mr. Brimms did regarding the meetings of that committee with the manufacturers, and as to those defendants who signed the outside agreement, if they were

called, each would testify as Mr. Bimms did relating to the meetings of the arbitration board with the outside carpenters. That is correct?

Mr. FOWLER. That is correct.

370 FRANK J. BARTUSKA testified on behalf of the defendant mill men.

Direct examination by Mr. Childs

My name is Frank J. Bartuska. I am a manufacturer of mill work connected with the California Manufacturing Co., and am a defendant in this case. In 1918 I held twelve shares of the California Manufacturing Co. I am 34 years old and was born in Chicago. Since I started in business I have been in the mill work industry practically all of the time. I have been connected with the California Co. since about 1906. In 1918 I held twelve shares of their stock out of a total of 100 shares. Mr. Mazinick held forty-seven shares and Mr. Bursec 15 shares and the rest was distributed among the employees of the company. I was the estimator for the company. I had prepared a tabulation showing the prices of mill work which the California Manufacturing Co. charged in the years 1919 and 1920.

I am familiar with the prices with the Morgan Sash & Door Co. were charging during 1919 and 1920; also the Curtis Sash & Door Co., Farley & Loescher Company, of Dubuque, and the Carr-Ryder and Adams Company, of Dubuque. I have the tabulation here that I referred to. I prepared the figures which I have here which pertain to the Morgan Sash & Door Company prices, from the price list of the Morgan Sash & Door Company, and the prices as to the Curtis Sash & Door Company from the price list of that company; the same with reference to the prices of Farley & Loescher Company and the Carr-Ryder and Adams Company.

The price list that I have on this memorandum of mine as to material sold by us were taken from actual sales that we made to our customers. On July 15, 1919, we were charging $6.00 apiece for oak doors, the average size being about 26 x 68, 1⅜ inch two-panel. On July 15, 1918, the Morgan Sash & Door Company was charging $5.90 for doors of that same character. On July 21, 1919, six days after the other date that I gave here, Farley & Loescher, of Dubuque, was charging $9.00 for the same class of doors and we were charging $6.00. On August 15, 1919, we were charging $6.60 and the Morgan Company was charging $6.73. On October 27

371 the Carr-Ryder and Adams Company were charging $9.55. On November 1, 1919, we were charging $6.93 for birch doors and the Carr-Ryder and Adams Company were charging $7.80 for birch doors at that time. On December 1, 1919, we were charging $9.78 for oak doors and on the same date Morgan Sash and Door Company was charging $10.48 for the same kind of doors and the

Curtis Sash & Door Company was charging the same price. On December 4 Carr-Ryder and Adams Company were charging $11.13 and we were charging $9.78.

On March 1, 1920, we were charging $11.80 for oak doors and Curtis Sash & Door Company were charging the same. March 10 Farley & Loescher were charging $14.12 and we were charging $11.80. Carr-Ryder and Adams Company on March 1, 1920, were charging $14.12, the same price as Farley & Loescher.

On April 1, 1919, we were charging $1.27 apiece for oak jambs and the Morgan Sash & Door Company were charging $1.10 apiece. On the same date we were charging $8.44 per hundred feet for oak base and the Morgan Sash & Door Company was charging $9.41 per hundred. The Curtis the same price. On June 2, 1919, we were charging $1.35 for oak jambs and the Morgan Company $1.30. Carr-Ryder and Adams Company were charging $2.00. On the same date we were charging $11.00 for oak base; $11.00 per hundred feet. The Morgan Company was charging $12.24 per hundred feet, and Carr-Ryder and Adams Company $15.34 per hundred feet. That is a Dubuque concern and Farley & Loescher is from Dubuque, Iowa, also.

On August 15, 1919, we were charging $1.93 for oak jambs; the Morgan Company $1.85, and Farley & Loescher Company $2.18 on the same day we were charging $13.75 for 100 feet of base, Morgan & Company $14.53 per 100 feet, and the Farley & Loescher Company $20.90 per hundred feet.

On August 15, 1919, we were charging $2.35 apiece for jambs and the Morgan Company $2.25, and Farley & Loescher $3.25. We were charging $17.90 for base, the Morgan Company $18.81, and Farley & Loescher $26.12.

On November 1, 1919, we were charging $1.45 for jambs made of gum wood, sap gum; on the same day Morgan & Company was charging $1.50 for the same material. I have no prices on that for the Carr-Ryder and Adams Company.

372 On December 1, 1919, we were charging $2.60 for jambs; Morgan & Company $3.10; Curtis Company $3.20; and the Carr-Ryder and Adams Company $3.35. We were charging for oak base $23.50 per hundred feet; Morgan Company $26.13; The Curtis Company the same as the Morgan Company, and Carr-Ryder and Adams were also charging the same price. I do not know how it happens that these outside concerns often charged the same price.

On December 1, 1919, we were charging $8.00 for chair rail; chair rail is a little st'ip of wood that goes along the wall that is about the height of the chair to prevent the wall from being battered up by the chairs. Morgan Company and Curtis Company were charging $8.94 and Carr-Ryder and Adams Company were charging the same price.

On March 1, 1920, we were charging $3.53 for jambs. The price from Morgan and Company on that date is not shown. I did not

have a quotation for that date, I guess. Curtis & Company was charging on that date, for jambs, $4.25 when we were charging $3.53. Farley & Loescher Company and Carr-Ryder and Adams Company charged $5.00. On that same date we were charging $28.12 per 100 feet of oak base. Curtis was charging $33.97, Farley & Loescher $39.18, and Carr-Ryder and Adams $41.80, as against our $28.

On March 1, 1920, we were charging $9.70 for chair rail. Curtis Company $11.61, Farley & Loescher Company $13.40, and the Carr-Ryder and Adams Company $14.30, as against our $9.70.

On August 19, 1920, we were charging $27.35 per 100 feet of oak base. Morgan & Company was charging $33.97, Farley & Loescher $39.18. On the same date the California Company was charging $9.27 per 100 feet for chair rail. That was my company. The Morgan Company $11.61, and Farley & Loescher $13.40. On December 1, 1920, we were charging $2.90 for oak jambs. Morgan & Company was charging $3.00 and Farley and Loescher Company $3.35. On that same date we were charging $21.60 per 100 feet of oak base and Morgan & Company and Farley & Loescher Company were charging $24.56 per 100 feet.

373 In arriving at these figures I took these various price lists of the different companies mentioned and took into consideration the discount from the universal lists in arriving at the net figures mentioned in this exhibit.

The general range of prices charged by Chicago mills was substantially the same during the years 1918, 1919, and 1920. The price of millwork increased from 1918 until 1920 because raw material went up in proportion, labor also went up, everything that entered into the manufacture of millwork went up. Labor went up from 50 cents to $1.10 per hour; lumber went up from $60 to $240, I believe. That affected all manufacturers alike.

Cross-examination by Mr. Fowler

I got my estimates in regard to these outside prices from price lists that those gentlemen sent out. I am merely judging their prices from the prices themselves. Some of these prices were mailed to me or to my company and some I got from others. I didn't have the price list of Roach & Musser. I got the price list of Farley & Loescher from Mr. Childs.

Cross-examination by Mr. Thompson

We didn't keep a cost account of the time worked for a workman to make a door. I can not state intelligently, without records, how much time was required of an inside workman in manufacturing the ordinary average stock door. We bought our stock doors on the outside. We bought them outside after 1918; we had a contract with the Hardwood.

Redirect examination by Mr. Childs

After May 1, 1918, we bought doors from C. L. Ibsen and of the Pacific Mutual Door Company, nonunion mills, and I think we got some from Morgan and Company, just a couple of odds and ends.

Cross-examination by Mr. Fowler

The Ibsen stuff may have had a union stamp on it; I don't know.

Mr. CHILDS. You don't know who installed the doors?

A. No, sir; I do not.

374 LOUIS C. HARING *testestified* on behalf of defendants:

Direct examination by Mr. Childs

My name is Louis C. Haring, and my business is sash and door and interior trim. I have been engaged in that business as a boss since 1887. I was born in Germany and have been in this country 59 years. I started as an apprentice in 1874 and have been in the business ever since. The name of my concern is the Melrose Mill. I am the proprietor at the present time and was an officer formerly. I did not belong to Division G of the Lumbermen's Association until the 12th of August, 1918. Prior to that I had been out of Division G or a nonmember since May, 1917. I went back into Division G in August, 1918. I have papers here to indicate the dates.

I attended meetings of Division G between the fall of 1917 and December, 1918. The 17th of December, 1918, was the first meeting I attended. I did not attend any meetings in the spring of 1918, and I do not know anything about what transpired at those meetings. I know nothing about them and have nothing to do with them.

Mr. FINK. Now, if your Honor please, I want to now at the close of the Government's case to renew the motion which I made. Now, at the close of all of the evidence of the case, I would like to renew the motion I made at the close of the Government's case as to directing a verdict as to all the mill-men defendants, for the reasons specified in the motion heretofore made.

Motion overruled; exception on behalf of all defendants.

Mr. THOMPSON. And may I have the same motion on behalf of my clients?

Motion overruled; exception on behalf of the defendants unions.

Mr. PRICE. And on behalf of the contractor defendants.

Motion overruled; exception on behalf of contractor defendants.

375 WILL T. STEWART testified on behalf of the millmen defendants:

Direct examination by Mr. Fink

My name is Will T. Stewart. I reside at 1244 Astor Street, and I am engaged in the management of property. I have lived in Chicago 55 years. I was in the wholesale grocery business for 25

years, and I have been engaged in the management of property since then. I have known George Rinn over 45 years. I have been associated with him since boyhood as a close friend; very intimate. I have had occasion to observe him in all the different relations of life, and from my association with him have been in a position to form a just estimate as to his character, and my estimate of his character is the very highest.

RICHARD E. SCHMIDT testified on behalf of the millmen defendants:

Direct examination by Mr. Fink

My full name is Richard E. Schmidt and my business that of an architect. I have been engaged in that business about 30 years, and have resided in Chicago about 57 years. I know the defendant, George Rinn, and have known him for about 30 years. My acquaintance with him has been close, socially and in club life, and in business. During that time I have had occasion to observe him in the different relations of life, and have had an opportunity to form a fair estimate as to his character. From my observation of him I would say that he had the highest character, good.

ROBERT GOLDIE testified on behalf of the millmen defendants:

Direct examination by Mr. Fink

My name is Robert Goldie and my business is that of a con-
376 tractor. I have been engaged in that business for 35 years.
I have known George Rinn for 30-odd years, and my acquaintance with him has been in a business way, principally. I have had occasion to form an estimate of his character in my business relations with him, and I think that estimate is a just and fair one. His character is of the highest standing.

CHARLES M. GILLETTE testified on behalf of the millmen defendants:

Direct examination by Mr. Fink

My name is Charles M. Gillette and I am vice president of the First National Bank. I believe it is one of the largest banking institutions in the city of Chicago. It is rather large. I have been in the bank for about 40 years. I know the defendant, George Rinn. I would imagine I have known him around 20 years. My acquaintance with him has been strictly business. I have loaned him money, the relations that exist between a banker and his customer. All my dealings with him have been entirely satisfactory and I have always regarded him as a high-class fellow in a business way. I would say that I have had an opportunity to form a just estimate as to Mr. Rinn's character and I would say he was a man of high character.

Cross-examination by Mr. Fowler

He does his banking business with us and I have learned to know him through our business and that is the only association I have had with him; just a business association.

JOHN A. CARROLL testified on behalf of the millmen defendants:

Direct examination by Mr. Fink

My name is John A. Carroll. I am president of the Hyde Park State Bank, the Jackson Park National Bank, and the South
377 Shore State Bank. I have known the defendant, Mr. H. F. Morris, about 20 years. My association and acquaintance with him has been close and intimate. I have had occasion to observe him in a different relations of life and have had an opportunity to form a fair and just estimate as to his character, and my opinion of his character is good.

Cross-examination by Mr. Fowler

Mr. Morris does not do his banking with me and does not transact any business with me at all. I know him as a business man. I have been closely associated in matters where he has been interested but he does not transact his banking business with me. I have had business relations with him outside of my bank but not banking relations.

FRANK BURKE testified on behalf of the millmen defendants:

Direct examination by Mr. Fink

My name is Frank Burke. I am a mason contractor and builder. I have known the defendant H. F. Morris around 26 years. My acquaintance with him has been intimate. We have done business together for 26 years. I have had occasion during that period of time to form a just estimate as to his character and have formed an opinion as to his character. It is good.

CORNELIUS A. FLANNIGAN testified on behalf of the millmen defendants:

Direct examination by Mr. Fink

My name is Cornelius A. Flannagan and I am in the lumber business. I have known the defendant H. F. Morris for over 20 years. For the first five or seven years I used to meet him two or three days a week in different contractors' offices when we were both on the street, and I know him at his home. I have known him
378 both in a social and a business way. I feel that during that period I have had an opportunity to form a fair and just esti-

mate as to his character and have formed such an opinion. It is good.

ROBERT M. MCKINNEY testified on behalf of the millmen defendants:

My name is Robert M. McKinney. I am vice president of the National Bank of the Republic. I have known the defendant H. F. Morris about 15 years. I have known him as a customer of the bank and only in that way. As a customer of the bank I have had what in my opinion is a fair opportunity to form a just estimate as to his character and I have formed such an opinion. I think it is excellent.

WILLIAM ADAMS testified on behalf of the millmen defendants:

My name is William Adams. My business is that of a contractor and builder. I have known Mr. T. E. Reynolds a little over 25 years. The nature of my association with him has been close and intimate in a business relation. I have during that period had an opportunity to observe him and to form a fair and just estimate as to his character and I have formed such an opinion. His character is of the very highest.

FRED C. RATHJE testified on behalf of the millmen defendants:

Direct examination by Mr. Fink

My name is Fred C. Rathje. I am assistant cashier of the Chicago City Bank & Trust Co. I have known the defendant Thomas E. Reynolds close on to 25 years. Our association has been very intimate. I have known him since I was a boy. I have had an opportunity to see him in the different relations of life, both socially and in a business way. I have had a fair opportunity to form a
379 just estimate as to the man's character, and have formed such an opinion. I am very glad to be associated with him socially and would not hesitate to be associated with him in a business way. My opinion is that his character is absolutely the highest.

Defendants rested their case.

Argument of Counsel

Mr. FOWLER. Your Honor, the Government has looked carefully over the record, and we find that there are 68 defendants, as I remember, and it is at this point in the proceedings going to enter a dismissal, as to, I believe it is 27 of them; anyway, I will read the list.

Of the group of millmen it dismisses as to:

The Andrews Lumber and Mill Company, and its representative, W. A. Irvine.

R. W. Bartelmann Company and R. W. Bartelmann.

Beck Coal & Lumber Company and Peter Beck.

Chicago & Riverdale Lumber Company and its representatives, E. S. Gamble and G. H. Dekker.

The A. Dietsch Company and Arthur Dietsch.
Barr & Collins and Frank S. Collins.
Vincent Dlouhy Sash & Door Company and Theodore Kartheiser.
Hartman-Sanders Company and P. J. Weidner.
C. E. Peterson Company and John Westberg.
South Side Interior Finish Company and its representative, August Newquist.

It also dismisses as to John Algot Olso, who is at home sick, as I understand, but not as to his company, the Standard Sash & Door Company.

It also dismisses from the Labor group:

Joseph Dusek and John Loris, who were agents over the inside men, had nothing to do with the outside men apparently.

And the contractors:

Mr. T. J. McGimsie.

It also dismisses as to the Hardwood Products Company and E. D. Beals, its representative, who don't appear to have had any connection with either one of the groups.

Agreement by council to prepare a list of the defendants remaining in the case for the use of the jury.

Upon the closing argument by the prosecution, Mr. Fowler, among other things said to the jury, in speaking of the witness Doyle: "He was not a Government witness, he was a reluctant witness."

380 And in speaking of the purpose of the millmen in urging Mr. Doyle and his committee to yield to the demands of the union:

"Now, Mr. Rinn says that what he did was for the purpose of preventing a strike. Well I don't care whether it was to prevent a strike or not; that would be just as unlawful, so far as that is concerned, and I think the court will tell you that, and it does not make any difference if they knew what the effect would be, and every man who had any sense knew that.

"If you believe Mr. Rinn you have no doubt of his guilt. Now keep that in your minds, that if the commerce of the Paine Company was interfered with, the law was violated."

Mr. Fink, on behalf of the millmen defendants, argued at length to the jury that it was incumbent upon the part of the prosecution to prove the conspiracy described in the indictment, and not some other or different conspiracy. He requested the jury to examine the indictment carefully with a view of ascertaining whether or not the conspiracy proven, if any, was the same as that described.

Mr. Fowler, for the prosecution, in reply to this argument said:

"The gentleman wants you to read all of that indictment. You can read it if you want to, and I don't care; I am not going to discuss the indictment much. I am not going to discuss it any as a a matter of fact. The court will tell you what the lawsuit is about, and the court will define the issues, and it is your business to follow the direction of the court and not the indictment. We are not trying

the indictment, and it is not necessary to prove everything said in the indictment. The court will make that perfectly clear to you."

Mr. Fink also quoted to the jury the following excerpt from the decision of the Supreme Court of the United States in the Nash case:

"That only such contract and combinations are within the prohibition of the Sherman Act, as by reason of intent or the inherent nature of the contemplated acts, prejudice the public interest by unduly restricting competition or unduly obstructing the course of trade."

And stated to the jury that the court would so instruct them, and thereupon by way of argument, applied the facts to these principles of law.

381 Immediately upon receipt of the verdict of guilty as to all the defendants, and before the court had adjourned, Mr. McKinley, the attorney for the contractor defendants, moved the court for a new trial as to the contractor defendants, and insisted that his motion be forthwith disposed of; whereupon the attorneys for the prosecution consented that the court might grant a new trial as to the contractor defendants, and as to these defendants the court thereupon ordered a new trial. Immediately upon the ordering of the new trial as to the contractor defendants, the prosecution dismissed the case as to the contractor defendants.

Charge to jury

After preliminary analysis of the indictment and classification of defendants, the court said:

Disregarding the verbiage of the indictment, it is in substance alleged that the manufacturing and union defendants formed and engaged in a conspiracy to prevent the shipment of sash, doors and interior trim into the city of Chicago by mills located outside of the State of Illinois, who were competitors of said manufacturing defendants; that this object was to be accomplished by the union men refusing to work upon material shipped to contractors and builders inside of said city, for use inside of said city, from factories outside of the State of Illinois, and that the contractor defendants also joined with the manufacturing and union defendants and aided and abetted them in carrying said conspiracy into effect.

An unlawful conspiracy is a combination between two or more persons to do an unlawful act or to accomplish an unlawful purpose, or to accomplish a lawful purpose by criminal or unlawful means. Under the statute heretofore read the offense consists in the formation of, or engaging in, the conspiracy to restrain interstate commerce; and it is not necessary to prove that the object contemplated was actually accomplished, although evidence of actual restraint should be looked to for the purpose of determining whether a conspiracy existed, and if so, its nature and purpose. It is not necessary that all the parties be present when a conspiracy is formed, nor is it necessary that there be any formal agreement or contract

382 between the parties, but its formation may result from a series of negotiations, or by any means which creates in the minds of the parties a common understanding and design; and its existence maybe proven by showing a positive agreement, written or verbal, or by statements and actions of the parties, or by a concerted course of conduct, or by circumstantial evidence of any other character. After an unlawful conspiracy has been brought into existence, any person who thereafter knowingly participates therein, and purposely commits acts which have the effect of furthering and carrying it into effect, thereby becomes a coconspirator. The mere fact that one is a member of an organization which by order of its governing body has entered into an unlawful combination or conspiracy, is not sufficient to justify a finding that he was a coconspirator. But, every person who knowingly and intentionally participates in any way in the formation of a conspiracy, or commits any act after its formation which aids in the accomplishment of its design, thereby becomes a member of such conspiracy and responsible for the results flowing therefrom, and is equally guilty with those who originally formed the conspiracy.

Corporations necessarily act through agents, and their guilt or innocence must be determined from the course of conduct of their agents when acting in their representative capacity.

Statements and acts of a coconspirator made or done in furtherance of the conspiracy, are admissible as evidence against all who are at that time parties to such conspiracy. But, declarations and acts of one, made or done before the existence of the conspiracy, or after its termination, can not be considered in determining the guilt or innocence of any person other than the one making the statement or committing the act. The Government has introduced the minutes of a number of meetings held by the millmen's association; also the minutes of a number of meetings of the contractors' association, and the minutes of several meetings of the district council, which is the ruling body of the carpenters' brotherhood; and it has also introduced the minutes of a number of meetings of the joint arbitration board, which was composed of members of the contractors' association and of the labor union. The minutes of such meetings of either of these bodies as were held prior to the formation of the conspiracy, if you should find that such conspiracy was at some time formed, should not be considered by you in determining the guilt or innocence of any person who was not associated with such body.

383 For illustration, take the minutes of the meetings of the millmen's association; if any of these meetings were held before the existence of the conspiracy, if you found one existed, the minutes of such meetings or meetings are not admissible as against the contractor defendants or union defendants. But, if you should find that a conspiracy of the character heretofore described, was at some time formed, the minutes of any meeting, which have a bearing upon the subject, may be considered as to all of the defendants, whom you may find were at that time members of such conspiracy. And the same rule applies to the minutes of the contractors' association, those of the

district council and those of the joint board of arbitration. Furthermore, you may and should consider the minutes of the meetings of each and all of the organizations mentioned, and other evidence of what transpired at those meetings, and the chronology in which the acts recorded occurred and their relationship, if any existed, to each other, to determine whether a conspiracy between the parties were formed, and if so, its nature.

The Government has introduced an agreement entered into between the Carpenter Contractors' Association of Chicago and the Carpenters' District Council of Chicago, which became effective June 1, 1918. It is not denied that this contract was actually signed by William F. Brims, W. G. Schardt, William C. White, Thomas F. Flynn, and D. J. Ryan, representing the Carpenters' District Council, and by D. H. Doyle, A. C. Wehrwein, Frank E. Doherty, William J. Scown, and Frank M. Stressenreuter, representing the Carpenter Contractors' Association. A part of the third section of this contract reads as follows:

"Both parties hereto this day hereby adopt the following principles as an absolute basis for their joint agreement and working rules, and to govern the action of the joint arbitration board, as hereinafter provided for."

And the third article of this section reads as follows:

"There shall be no restrictions against the use of any manufactured material except nonunion and prison made. This shall not apply to machine-made flooring, ceiling or ceiling partition, planed lumber, timber, or hardware of any kind."

I charge you that if by said article 3 of section 3 of this contract it was intended that there should be a restriction against non-union-made sash and doors and interior trim, which restrictions
384 should be enforced by a refusal of the members of the labor union to install such material in buildings, and that if the necessary effect of such refusal would be to substantially restrain the flow of commerce in such material into the city of Chicago from outside the State of Illinois, by preventing manufacturers of such material outside the said State from selling and shipping their said product into the city of Chicago, then the execution of such contract was unlawful, and any act designed or having the effect of carrying out and accomplishing the purpose intended by such agreement was also unlawful. However, the execution of this agreement alone, though unlawful, would not warrant a conviction under this indictment, because it does not constitute the conspiracy described therein, but this agreement is important for your consideration as you may determine whether it did or did not constitute a part of the conspiracy alleged in the indictment. That is, was it a part of the scheme devised by the manufacturing and union defendants, and participated in by the contractor defendants, which was intended to, or the necessary effect of which was to, prevent the shipment into Chicago of doors, windows, and interior trim from factories located

outside of the State of Illinois? In determining that question you may look to the entries upon the minutes of the several organizations above mentioned, and also what was said on any occasion in said meetings, subject, however, to the rule of evidence heretofore stated, in reference to the admissibility of statements and acts of one co-conspirator against another.

It is said on behalf of the defendants that the indictment alleges a conspiracy to prevent the shipment of material manufactured outside of the State of Illinois into the city of Chicago, whereas the agreement above mentioned between the Carpenter Contractors' Association and the Carpenters' District Council relates to restrictions upon non-union-made material, and that the proof shows that the object of this agreement upon the part of the labor union was to prevent work upon nonunion material, regardless of where the material was manufactured, whether inside or outside the State of Illinois, and thereby to compel the unionizing of nonunion factories. It is therefore insisted that there is a fatal variance between the proof and the allegations of the indictment. However, upon this question I charge you that it is not material what the object was that the labor union intended to accomplish by the adoption of article 3, provided that in its accomplishment it was necessary
385 that interstate commerce in doors, sash, and interior trim be substantially restrained. In determining this question you will take into consideration the conditions actually existing. Were all or nearly all of the plants engaged in manufacturing sash, doors, and interior trim inside the city of Chicago factories operated by employes who were members of the labor union? Were the factories located outside the State of Illinois and which shipped sash, doors, and interior trim into the city of Chicago all or nearly all nonunion factories? And would the enforcement of article 3 affect but one or very few of the factories located in the city of Chicago, and would it affect sales and shipments into Chicago from all or nearly all of the mills located outside the State of Illinois? If such be the situation, then it is immaterial that it specified in the agreement between the contractors' association and the district council, or in the agreement which constituted the conspiracy proven, if one be proven, that the restriction in terms related to non-union-made material, and that material manufactured outside of the State of Illinois was not specifically designated.

It is suggested that on behalf of some of the defendants that if the conspiracy or agreement of the character mentioned in the indictment was entered into, they are not guilty, because they became parties thereto by coercion. I charge you, however, that there is no coercion proven in this case of such character as to jutify one's entering into a conspiracy in violation of law. It is the duty of the citizen to resist the violation of law, and if he finds that his business will in all probability be damaged if he shall refuse to enter into such a combination, the law provides for him a remedy; and it is

his duty to resort to the courts for protection, and not to submit, to the extent of engaging in acts of lawlessness, to threats of coercion of any character by other parties.

It is also insisted that the union defendants are not guilty, because it is lawful for laborers to form themselves into union and to promote the welfare of its several members by inducing the owners of factories to work only union men. This contention is true if not carried too far. It is unquestionably lawful for laboring men to organize themselves into unions. It is also lawful for them to agree upon and maintain by peaceful means a strike against their employers to secure higher wages or better working conditions, or any other lawful object. They may also endeavor to induce the operators of factories other than those at which they are em-
386 ployed to employ none but union men, and may by persuasion and argument induce the employes of operators other than those employing them to join, or organize themselves into a union. But there is a limit beyond which they cannot lawfully extend their activities. The anti-trust act, under the provisions of which this action is prosecuted, applies to labor organizations and laboring men, the same as to any other individuals, corporations, or voluntary associations. And I charge you, that if the Carpenters' District Council, through its agents, entered into an agreement with the manufacturers in Chicago of sash, doors, and interior trim, not to install or work upon non-union-made goods, and it was intended thereby, or the known necessary result of its enforcement was to substantially interfere with or impede the shipment in interstate commerce of sash, doors, and interior trim into Chicago from factories located outside of the State of Illinois, such agreement was unlawful, and if you find beyond a reasonable doubt that any or all of the union defendants engaged in such a combination or conspiracy, you should return a verdict of guilty against those so engaging, though their purpose may have been to secure the unionizing on non-resident factories.

The Government has introduced certain witnesses who testified that they paid certain defendants, who were business agents of the district council sums of money, in order that they might be able to have non-union material installed. It is, of course, a question of fact for you to decide whether such payments, or either of them, were actually made. If you find they were, then as to what consideration should be given this testimony, I charge you that if the material which was permitted to be installed because of the payments to the business agent of money, had been shipped into Chicago from outside of the State of Illinois, such evidence may be considered for two purposes, first, to determine whether or not a burden was imposed upon interstate commerce because of the conspiracy, providing you find such conspiracy existed, and, second, to determine the attitude of the recipient of the money to the conspiracy; that is, whether or not he was engaging therein.

If, however, the material was not shown to have been shipped into Chicago from outside the State of Illinois, as is the state of evidence relating to the material used in connection with the soda fountain in the Owl Drug Store, the evidence can only be considered for the second purpose; that is, in determining whether he who received the money was participating in and carrying
387 out the conspiracy. Under no circumstances can you consider such testimony in determining the guilt or innocence of any defendant except the one who received such a payment of money.

It is not necessary that the Government prove that the millmen or manufacturing defendants, or any of them, and the labor union defendants communicated directly with each other, and came to a positive understanding as to their course of conduct. If the union defendants and the contractor defendants, or any of them, had under negotiation an agreement which, if carried into effect, would necessarily and directly restrain interstate commerce in sash, doors, and interior trim, and any of the manufacturing defendants counselled, aided and abetted in having said agreement consummated, knowing why the agreement was desired by the union, and that the result would be to materially restrain interstate commerce in the material mentioned, they and all others who knowingly and purposely joined them in carrying said agreement into effect were guilty; and the desire to prevent a possible or probable strike and shutting down of factories would constitute no legitimate excuse for such conduct.

Nor is it necessary for the Government to prove that a defendant intended by his action to violate the antitrust act, or to restrain interstate commerce. If he purposely engaged in the conspiracy alleged, and the necessary and direct result of such conspiracy was to materially restrain interstate commerce in the material described, he is largely chargeable with intending that result, and can not to be heard to say the contrary.

It is the duty of the jury to receive the law as it is given to them by the court. It is the exclusive province of the court to determine what the law is, and the jury had no right to hold the law to be otherwise in any particular than as given to them by the court.

The court instructs the jury that a doubt produced by undue sensibility in the mind of any juror in view of the consequence of his verdict is not a reasonable doubt. You are not at liberty to disbelieve as jurors if from the evidence you believe as men. Your oath imposes on you no obligation to doubt where no doubt would exist if no oath had been administered. If, after an impartial consideration of all the evidence, you feel an abiding conviction of the guilt of the defendants, or any or either of them, and are satisfied to a moral certainty of the truth of the charge made against
388 them, or any or either of them, then you are satisfied beyond a reasonable doubt.

The court instructs the jury as a matter of law that one accused and on trial charged with the commission of a crime may testify in his own behalf or not as he pleases. You are instructed that when

a defendant does testify in his own behalf, then you have no right to disregard his testimony merely because he is accused of crime; that when he does so testify, he at once becomes the same as any other witness and his credibility is to be tested by and subjected to the same tests as are legally applied to any other witness; and in determining the degree of credibility that shall be accorded to his testimony the jury have a right to take into consideration the fact that he is interested in the result of the prosecution, as well as his demeanor and conduct on the witness stand; and the jury may also take into consideration the fact, if such is the fact, that he has been corroborated or contradicted by credible evidence or by facts or circumstances in evidence. The question of the weight and credit to be given to each and every witness on either side is entirely for the jury.

The court instructs you that the previous good character of the defendants, if proved to your reasonable satisfaction, is a fact in the case which the jury should consider in passing upon the question of their guilt or innocence; but if all the evidence in the case, including that given touching the previous good character of the defendants, shows them, or any of them, to be guilty of the offense, then such previous good character can not justify, excuse, or mitigate the offense.

The court instructs you that it is not necessary for the defendants, or any of them, to prove their innocence, but it is incumbent upon the prosecution to establish beyond a reasonable doubt every material fact necessary to constitute the crime charged against them; and in the investigation of all matters of fact, and the weighing of the evidence, you have no right to assume the guilt of the defendants, or any of them, and then try to reconcile the testimony with such theory, but it is your sworn duty to presume the innocence of the accused and give them the benefit of such presumption all through the trial and at every stage of the investigation, and in order to deprive the defendants, or any of them, of the benefit of this humane presumption of law the evidence must not only be consistent with the theory of guilt, but it must be inconsistent with and exclude every reasonable theory of innocence, and as long as you are able to
389 reconcile the evidence with the theory of the innocence of the defendants, or any of them, then the law makes it your duty to do so, and find them, or any of them, not guilty.

The court, however, instructs you as a matter of law that in considering the case, you are not to go beyond the evidence to hunt up doubts, nor must you entertain such doubts as are merely chimerical or conjectural. A doubt, to justify an acquittal, must be reasonable, and it must arise from a candid and impartial investigation of all the evidence in the case, and unless it is such that, were the same kind of doubt interposed in the graver transactions of life, it would cause a reasonable and prudent man to hesitate and pause, it is insufficient to authorize a verdict of "not guilty." If, after considering all the evidence, you can say that you have an abiding con-

viction of the truth of the charge, you are satisfied beyond a reasonable doubt.

Exceptions to charge to the jury

Whereupon, and before the jury had retired, the counsel for the union defendants, excepted to the following portion of the court's charge to the jury:

I charge you that if by said article 3 of section 3 of this contract, it was intended that there should be a restriction against nonunion-made sash and doors and interior trim, which restrictions should be enforced by a refusal of the members of the labor union to install such material in buildings, and that if the necessary effect of such refusal would be to substantially restrain the flow of commerce in such material into the city of Chicago from outside the State of Illinois, by preventing manufacturers of such material outside the said State from selling and shipping their said product into the city of Chicago, then the execution of such contract was unlawful, and any act designed or having the effect of carrying out and accomplishing the purpose intended by such agreement, was also unlawful.

Which exception the court overruled and refused to modify said instruction.

Whereupon counsel for union defendants then and there excepted to the following portion of the court's charge to the jury:

It is therefore insisted that there is a fatal variance between the proof and the allegations of the indictment. However, upon this question I charge you that it is not material what the object was
that the labor union intended to accomplish by the adoption
390 of article 3, provided that in its accomplishment it was necessary that interstate commerce in doors, sash, and interior trim be substantially restrained.

Which exception the court overruled and refused to modify said instruction.

Whereupon and before the jury had retired the counsel for the union defendants excepted to the following portion of the court's charge to the jury:

It is also insisted that the union defendants are not guilty, because it is lawful for laborers to form themselves into union and to promote the welfare of its several members by inducing the owners of factories to work only union men. This contention is true if not carried too far. It is unquestionably lawful for laboring men to organize themselves into unions. It is also lawful for them to agree upon and maintain by peaceful means a strike against their employers to secure higher wages or better working conditions, or any other lawful object. The may also endeavor to induce the operators of factories other than those at which they are employed to employ none but union men, and may by persuasion and argument induce the employees of operators other than those employing them to join or organize themselves into a union. But there is a limit beyond

which they can not lawfully extend their activities. The antitrust act, under the provisions of which this action is prosecuted, applies to labor organizations and laboring men, the same as to any other individuals, corporations, or voluntary associations. And I charge you that if the Carpenters' District Council, through its agents, entered into an agreement with the manufacturers in Chicago of sash, doors, and interior trim not to install or work upon nonunion-made goods, and it was intended thereby or the known necessary result of its enforcement was to substantially interfere with or impede the shipment in interstate commerce of sash, doors, and interior trim into Chicago from factories located outside of the State of Illinois, such agreement was unlawful, and if you find beyond a reasonable doubt that any or all of the union defendants engaged in such a combination or conspiracy, you should return a verdict of guilty against those so engaging, though their purpose may have been to secure the unionizing of nonresident factories.

Which exception the court overruled and refused to modify said instruction.

Whereupon counsel for union defendants then and there
391 excepted to the following portion of the court's charge to the jury:

The Government has introduced certain witnesses who testified that they paid certain defendants, who were business agents of the district council sums of money, in order that they might be able to have nonunion material installed. It is, of course, a question of fact for you to decide whether such payments, or either of them, were actually made. If you find they were, then as to what consideration should be given this testimony. I charge you that if the material which was permitted to be installed because of the payments to the business agent of money, had been shipped into Chicago from outside of the State of Illinois, such evidence may be considered for two purposes, first, to determine whether or not a burden was imposed upon interstate commerce because of the conspiracy, providing you find such conspiracy existed, and, second, to determine the attitude of the recipient of the money to the conspiracy, that is, whether or not he was engaging therein. If, however, the material was not shown to have been shipped into Chicago from outside the State of Illinois, as is the state of evidence relating to the material used in connection with the soda fountain in the Owl Drug Store, the evidence can only be considered for the second purpose, that is in determining whether he who received the money was participating in and carrying out the conspiracy. Under no circumstances can you consider such testimony in determining the guilt or innocence of any defendant except the one who received such a payment of money.

Which exception the court overruled and refused to modify said instruction.

Whereupon counsel for union defendants then and there excepted to the following portion of the court's charge to the jury:

It is not necessary that the Government prove that the millmen or manufacturing defendants, or any of them, and the labor union defendants communicated directly with each other, and came to a positive understanding as to their course of conduct. If the union defendants and the contractor defendants, or any of them, had under negotiation an agreement which, if carried into effect, would necessarily and directly restrain interstate commerce in sash, doors, and interior trim, and any of the manufacturing defendants counselled, aided, and abetted in having said agreement consummated,
392 knowing why the agreement was desired by the union, and that the result would be to materially restrain interstate commerce in the material mentioned, they and all others who knowingly and purposely joined them in carrying said agreement into effect were guilty; and the desire to prevent a possible or probable strike and shutting down of factories would constitute no legitimate excuse for such conduct.

Which exception the court overruled and refused to modify said instruction.

Whereupon counsel for the union defendants then and there, and before the jury had retired, requested the court to instruct the jury as follows:

The union defendants and their organization had a lawful right to adopt in good faith as a general policy that union carpenters would not install nonunion millwork, and the fact that in pursuance of that general policy they refused to install nonunion millwork made in other States doesn't of itself constitute a violation of the Sherman law.

Which request the court then and there refused, and counsel for the defendants duly excepted to the ruling of the court.

Whereupon counsel for the union defendants then and there, before the jury had retired, requested the court to instruct the jury as follows:

The making of the agreement shown in evidence between the manufacturers of millwork and the district council (Government's Exhibit 5) was not a violation of the Sherman Act.

Which request the court refused and counsel for defendants then and there duly excepted to the ruling of the court.

Whereupon counsel for the union defendants then and there, before the jury had retired, requested the court to instruct the jury as follows:

The making of the agreement shown in evidence between the Carpenter Contractors' Association and the Carpenters' District Council was not of itself a violation of the Sherman law.

Which request the court refused and counsel for defendants then and there duly excepted to the ruling of the court.

Whereupon counsel for the union defendants then and there, and before the jury had retired, requested the court to instruct the jury as follows:

Workmen are under no legal obligation to work on any kind of material. If they deem it to their interest to refuse to work on nonunion-made material, they have a legal right to do so, and
393 the mere fact that such material may have been made in some other State does not render such refusal unlawful, nor in violation of the Sherman Act.

Which request the court overruled and refused, saying, of course, that abstractly might be true, but there are other circumstances that have to be taken here, but I overrule it.

Counsel for defendants then and there duly excepted to the ruling of the court.

Whereupon counsel for the union defendants, then and there, and before the jury had retired, requested the court to instruct the jury as follows:

Workmen, either individually or as a union, may impose whatever conditions they see fit to their employment, and if denied, may refuse or quit the service,

Which request the court overruled and refused, and cousel for defendants then and there duly excepted to the ruling of the court.

And thereupon the court was requested on behalf of the defendants, Von Platen & Dick Company, Chicago Sash, Door & Blind Manufacturing Co., Melrose Mill Co. Wm. Morris & Sons Co., Standard Sash and Door Co., Union Interior Finish Co., Phillip Rinn Co., Nollau & Wolff Mfg. Co., Frank Bartuska, C. O. DeSwarte, James A. Dick, Ewald Dierssen, Louis C. Haring, Harry F. Morris, T. H. Reynolds, George P. Rinn, H. D. Treager, Frederick Werkmeister, to charge the jury in manner and form as stated in defendants' request No. 1, as follows:

Defendants requested instructions to jury

Defendants' request No. 1

"The prosecution must prove that the defendants or some of them engaged in the combination or conspiracy described in the in-
394 dictment. You can not convict any of the defendants of any combination or conspiracy other than the one described in the indictment"—

But the court refused to charge the jury as requested in said defendants' request No. 1, to which refusal of the court to charge the jury as requested, the defendants then and there duly excepted.

And thereupon the court was requested on behalf of the defendants to charge the jury in manner and form as stated in defendants' request No. 2, as follows:

Defendants' request No. 2

"The conspiracy described in the indictment is one alleged to have been entered into between the defendant mill owners and cer-

tain members of the United Brotherhood of Carpenters and Joiners of America, the purpose of which was to exclude from Chicago building material manufactured in States other than Illinois. You can not convict any of the defendants of any other or different combination or conspiracy than the one so described"—

But the court refused to charge the jury, as requested in said defendants' request No. 2, to which refusal of the court to charge the jury as requested, the defendants then and there duly excepted.

And thereupon the court was requested on behalf of the defendants to charge the jury in manner and form as stated in defendants' request No. 3, as follows:

Defendants' request No. 3

"You are instructed that if some of the millmen defendants, knowing that the labor union was about to enforce its policy of refusal to handle nonunion-made material, agreed with some of the carpenter contractor defendants, that the millmen defendants would recommend to their association the granting of the trade discount if the contractor defendants would recommend to their association the yielding to the union of its demand for a change in Article III, you can not convict either the millmen defendants or the contractor defendants, even though you should find that the purpose of the millmen defendants was to exclude from the Chicago market, nonunion material made outside of the State of Illinois, because such a combination between the mill defendants and the contractor defendants is not the combination described in the indictment"—

395 But the court refused to charge the jury as requested in said defendants' request No. 3, to which refusal of the court to charge the jury as requested, the defendants then and there duly excepted.

And thereupon the court was requested on behalf of the defendants to charge the jury in manner and form as stated in defendants' request No. 4, as follows:

Defendants' request No. 4

"You are instructed that the only legal evidence adduced by the Government of a purpose on the part of some of the millmen defendants to exclude from the Chicago market nonunion material manufactured in States other than Illinois, is the testimony of one of the contractor defendants, Doyle, who, according to his own testimony, was an accomplice.

"An accomplice is a person who knowingly, voluntarily and with common intent with the principal offender, unites in the commission of a crime"—

But the court refused to charge the jury as requested in said defendants' request No. 4, to which refusal of the court to charge the jury as requested, the defendants then and there duly excepted.

And thereupon the court was requested, on behalf of the defendants, to charge the jury in manner and form as stated in defendants' request No. 5, as follows:

"If you find that some of the mill defendants are guilty of the offense charged in the indictment and that the contractor defendant Doyle knowingly, voluntarily, and with same intent as the guilty mill defendants united with them in the commission of the crime, then I instruct you that the contractor defendant Doyle is an accomplice of the guilty mill defendants"—

But the court refused to charge the jury as requested in said defendants' request No. 5, to which refusal of the court to charge the jury as requested the defendants then and there duly excepted.

And thereupon the court was requested on behalf of the defendants to charge the jury in manner and form as stated in defendants' request No. 6, as follows:

Defendants' request No. 6

"You can not find any of the defendants guilty unless you
396 find as to such defendants a purpose or intent to keep out of the Chicago market building material manufactured in States other than Illinois.

"The known effect of certain acts is not necessarily conclusive evidence of the purpose with which such acts are done. The known effect of such acts is but one of the circumstances to be taken into consideration with all other evidence in the case in arriving at a conclusion as to what was in fact the purpose with which the acts were done"—

But the court refused to charge the jury, as requested in said defendants' request No. 6, to which refusal of the court to charge the jury as requested the defendants then and there duly excepted.

And thereupon the court was requested, on behalf of the defendants, to charge the jury in manner and form as stated in defendants' request No. 7, as follows:

Defendants' request No. 7

"Under the penal provisions of the Sherman Act, upon which the indictment in this case is based, it devolves upon the prosecution to prove beyond a reasonable doubt that the defendants had a criminal intent, and criminal intent means an intent or purpose to do knowingly and wilfully that which is condemned as wrong by the act"—

But the court refused to charge the jury, as requested in said defendants' request No. 7, to which refusal of the court to charge the jury as requested the defendants then and there duly excepted.

And thereupon the court was requested, on behalf of the defendants, to charge the jury in manner and form as stated in defendants' request No. 8, as follows:

Defendants' request No. 8

"One of the essential elements to be proved by the Government in this case before you can find the defendants guilty is that of criminal intent"—

But the court refused to charge the jury, as requested in said defendants' request No. 8, to which refusal of the court to charge the jury as requested the defendants then and there duly excepted.

And thereupon the court was requested, on behalf of the defendants, to charge the jury in manner and for as stated in defendants' request No. 9, as follows:

397 Defendants' request No. 9

"This is a civil action. The defendants are charged with a crime and the presumption of innocence itself is in the nature of evidence of good faith and pure intent, and must prevail until it is overcome by other evidence in the case to your satisfaction and beyond all reasonable doubt"—

But the court refused to charge the jury, as requested in said defendants' request No. 9, to which refusal of the court to charge the jury as requested, the defendants then and there duly excepted.

And thereupon the court was requested, on behalf of the defendants, to charge the jury in manner and form as stated in defendants' request No. 10, as follows:

Defendants' request No. 10

"Before you can find the defendants, or any of them, guilty in this case, you must be satisfied beyond all reasonable doubt, that they did the things charged in the indictment, and that too, with the intention of entering into the combination charged, and in determining the question of intent, you must take into consideration all the circumstances shown by the evidence and exclude every just and reasonable hypothesis of good faith"—

But the court refused to charge the jury, as requested in said defendants' request No. 10, to which refusal of the court to charge the jury as requested, the defendants then and there duly excepted.

And thereupon the court was requested, on behalf of the defendants, to charge the jury in manner and form as stated in defendants' request No. 11, as follows:

Defendants' request No. 11

"This is not a civil case. It is a criminal prosecution. In such cases, a criminal intention must accompany the act in order to constitute a crime. And the act itself, while it may be the basis for the

inference of a criminal intention by the jury, and is frequently irrefragable evidence of such intent, if unaccompanied by such criminal intent, is not crime"—

But the court refused to charge the jury, as requested in said defendants' request No. 11, to which refusal of the court
398 to charge the jury as requested, the defendants then and there duly excepted.

And thereupon the court was requested, on behalf of the defendants, to charge the jury in manner and form as stated in defendants' request No. 12, as follows:

Defendants' request No. 12

"Only such contracts and combinations are within the prohibitions of the Sherman Act as by reason of intent or the inherent nature of the contemplated acts, prejudice the public interest by unduly restricting competition or unduly obstructing the course of trade"—

But the court refused to charge the jury, as requested in said defendants' request No. 12, to which refusal of the court to charge the jury as requested, the defendants then and there duly excepted.

And thereupon the court was requested, on behalf of the defendants, to charge the jury in manner and form as stated in defendants' request No. 13, as follows:

Defendants' request No. 13

"You are instructed that before you can find any of the defendants guilty, you must find that the contract, combination or conspiracy described in the indictment, if one in fact existed, either by reason of intent or the inherent nature of the contemplated acts, prejudice the public interest by unduly restricting competition or unduly obstructing the course of trade"—

But the court refused to charge the jury, as requested in said defendants' request No 13, to which refusal of the court to charge the jury as requested, the defendants then and there duly excepted.

And thereupon the court was requested, on behalf of the defendants, to charge the jury in manner and form as stated in defendants' request No. 14, as follows:

Defendants' request No. 14

"The gist of the crime of conspiracy consists in a corrupt agreement between two or more individuals to do an unlawful act, either as a means of as an end. The criminal quality resides in the intention of the parties to the agreement construed in connection with the purposes contemplated"—

399 But the court refused to charge the jury, as requested in said defendants' request No. 14, to which refusal of the court to charge the jury as requested, the defendants then and there duly excepted.

And thereupon the court was requested, on behalf of the defendants, to charge the jury in manner and form as stated in defendants' request No. 15, as follows:

Defendants' request No. 15

"The mere fact that the conspiracy has for its object the doing of an act which may be unlawful, followed by the doing of such act, does not constitute the crime of conspiracy, unless the jury find that the parties were actuated by a criminal intent"—

But the court refused to charge the jury, as requested in said defendants' request No. 15, to which refusal of the court to charge the jury as requested, the defendants then and there duly excepted.

And thereupon the court was requested, on behalf of the defendants, to charge the jury in manner and form as stated in defendants' request No. 16, as follows:

Defendants' request No. 16

"The actual crime or wrongful purpose must accompany the agreement or combination, and if that is absent the crime of conspiracy has not been committed. It is alike the general rule of law and the dictate of natural justice, that to constitute guilt, there must not only be a wrongful act, but a criminal intention"—

But the court refused to charge the jury, as requested in said defendant's request No. 16, to which refusal of the court to charge the jury as requested, the defendants then and there duly excepted.

And thereupon the court was requested, on behalf of the defendants, to charge the jury in manner and form as stated in defendants' request No. 17, as follows:

Defendants' request No. 17

"If you believe from the evidence that the millmen's labor committee, in good faith, offered to recommend to their association the trade discount which the contractors were seeking, if the con-
400 tractors on their part would accept article 3 as then demanded by the labor union, in order to avoid tying up the industry in Chicago, then you are instructed that in making this offer the labor committee of the millmen's association did not violate any of the provisions of the Sherman Act, and your verdict must be not guilty"—

But the court refused to charge the jury, as requested in said defendants' request No. 17, to which refusal of the court to charge the jury as requested, the defendants then and there duly excepted.

And thereupon the court was requested, on behalf of the defendants, to charge the jury in manner and form as stated in defendants' request No. 18, as follows:

Defendants' request No. 18

"The federation must be corrupt. If the motives of the confederates are not corrupt, no criminality can attach to the confederation.

"If you believe from the evidence that the defendants acted in good faith, in the honest belief that they were doing what they had a legal right to do, you must acquit, even though the effect of what defendants actually did was to restrain trade"—

But the court refused to charge the jury, as requested in said defendants' request No. 18, to which refusal of the court to charge the jury as requested, the defendants then and there duly excepted.

And thereupon the court was requested, on behalf of the defendants, to charge the jury in manner and form as stated in defendants' request No. 19, as follows:

Defendants' request No. 19

"If you should find from the evidence that the primary purpose of the carpenter joiners in refusing to handle nonunion-made material was to strengthen their own union and thereby benefit themselves, you must acquit them even though you should find that the effect of their action was to limit and restrain the interstate commerce of the foreign mills"—

But the court refused to charge the jury, as requested in said defendants' request No. 19, to which refusal of the court to charge the jury as requested, the defendants then and there duly excepted.

And thereupon the court was requested, on behalf of the defendants, to charge the jury in manner and form as stated in defendants' request No. 20, as follows:

401 Defendants' request No. 20

"If you should find from the evidence that the primary purpose of the defendant millmen in offering to employ only union carpenters, if the union carpenters would refuse to work upon nonunion-made material, was to benefit themselves, you must acquit such millmen defendant, even though you should find that the effect of their action was to limit and restrain the interstate commerce of the foreign mills"—

But the court refused to charge the jury, as requested in said defendants' request No. 20, to which refusal of the court to charge the jury as requested the defendants then and there duly excepted.

And thereupon the court was requested, on behalf of the defendants, to charge the jury in manner and form as stated in defendants' request No. 21, as follows:

Defendants' request No. 21

"The testimony of an accomplice is always to be received with caution, and weighed and scrutinized with great care by the jury, and it is usual for courts to instruct juries, and you are so instructed in this case, not to regard the evidence of an accomplice unless he is confirmed and corroborated in some material part of his testimony connecting the defendant with the crime by unimpeachable testimony"—

But the court refused to charge the jury, as requested in said defendants' request No. 21, to which refusal of the court to charge the jury as requested, the defendants then and there duly excepted.

And thereupon the court was requested, on behalf of the defendants, to charge the jury in manner and form as stated in defendants' request No. 22, as follows:

Defendants' request No. 22

"It is the duty of the court to call your attention to certain rules which obtain in courts of justice in reference to these persons known in law as accomplices. An accomplice, notwithstanding the turpitude of his conduct, is not on that account an incompetent witness. It is the rule in courts of the United States that an accomplice in the commission of a crime is a competent witness, and the
402 Government has the right to use him as a witness. It is the duty of the court to take his testimony, and that of the jury to consider it"—

But the court refused to charge the jury, as requested in said defendants' request No. 22, to which refusal of the court to charge the jury as requested, the defendants then and there duly excepted.

And thereupon the court was requested, on behalf of the defendants, to charge the jury in manner and form as stated in defendants' request No. 23, as follows:

Defendants' request No. 23

"Corroborative evidence must relate to some portion of the evidence which is material to the issue, and while it need not go to the whole case yet no evidence can be legally competent and sufficient to corroborate an accomplice which does not tend to confirm the testimony of the accomplice upon a point material to the issue in the sense that it tends to prove the guilt of the defendant"—

But the court refused to charge the jury, as requested in said defendants' request No. 23, to which refusal of the court to charge the jury as requested the defendants then and there duly excepted.

And thereupon the court was requested, on behalf of the defendants, to charge the jury in manner and form as stated in defendants' request No. 24, as follows:

Defendants' request No. 24

"A conspiracy to commit a crime can not be proven by the uncorroborated statements and declarations of the alleged conspirators, either during the progress of the alleged conspiracy or after its termination"—

But the court refused to charge the jury, as requested in said defendants' request No. 24, to which refusal of the court to charge the jury as requested, the defendants then and there duly excepted.

And thereupon the court was requested, on behalf of the defendants, to charge the jury in manner and form as stated in defendants' request No. 25, as follows:

Defendants' request No. 25

"A fair and proper test of whether a certain fact or a certain circumstance or certain other testimony than that given by an
403 alleged accomplice, is corroborative of the evidence which is given by such alleged accomplice, is the following, namely:

"Eliminate or leave out from the case the evidence of the alleged accomplice, and then examine said fact or circumstance, or said other testimony, with a view of ascertaining if said fact, or said circumstance, or said other testimony constitutes inculpatory evidence—that is, evidence tending to prove that the defendants, or any of them, are guilty in manner and form as charged in the indictment. If said fact or said circumstance, or said other testimony, when so examined, does constitute evidence tending to prove that the defendants, or any of them, are guilty in manner and form as charged in the indictment, then said fact, or said circumstance, or said other testimony, is evidence corroborative of the evidence given by said alleged accomplice. If, however, when said fact or said circumstance, or said other testimony, is so examined, it does not constitute evidence tending to prove that the defendants, or any of them, are guilty in manner and form as charged in the indictment, it is not evidence which is corroborative of the testimony given by such alleged accomplice"—

But the court refused to charge the jury, as requested in said defendants' request No. 25, to which refusal of the court to charge the jury as requested, the defendants then and there duly excepted.

And thereupon the court was requested, on behalf of the defendants, to charge the jury in manner and form as stated in defendants' request No. 26, as follows:

Defendants' request No. 26

"No evidence is corroborative of the testimony given by any alleged accomplice in this case, unless, first, it is such evidence as is wholly independent of the testimony given by such alleged accomplice; and unless, second, it is evidence coming from some other

source than another alleged accomplice or other alleged accomplice, and unless, third, it is evidence which tends to prove that the defendants, or some of them, are guilty of the conspiracy charged in the indictment"—

But the court refused to charge the jury, as requested in said defendants' request No. 26, to which refusal of the court to charge the jury as requested, the defendants then and there duly excepted.

And thereupon the court was requested, on behalf of the defendants, to charge the jury in manner and form as stated in defendants' request No. 27, as follows:

404 Defendants' request No. 27

"Whether a particular act, contract, or method in furtherance of trade and commerce is illegal, may in doubtful cases turn upon the intent to be inferred from the extent of the control, thereby secured over the commerce, as well as by the method which was used"—

But the court refused to charge the jury, as requested in said defendants' request No. 27, to which refusal of the court to charge the jury as requested, the defendants then and there duly excepted.

Order settling bill of exceptions

The foregoing bill of exceptions contains all of the evidence and instructions of the court referring to, or material to a consideration, of the exceptions urged by the parties hereto; and because the matters aforesaid do not fully appear of record, the defendants present this, their bill of exceptions, and pray that the same may be signed and sealed by the judge of this court and filed and made a part of the record herein as of the 20th day of October, 1923, pursuant to the statute, etc., which is accordingly done this 20th day of December, 1923.

Certificate of the judge

The jurisdiction and power of this court to settle and sign the bill of exceptions herein and to make the same a part of the record herein, having been preserved by order of this court heretofore entered herein on October 20, 1920, in words and figures as follows, to wit:

"Upon motion of the defendants, it is ordered by the court that the time for filing assignments of error and for signing and filing of the bill of exceptions herein, as the same may be settled and signed, be and the same is hereby extended until the 20th day of December, 1923, and that whenever so settled and signed, the same shall stand as settled and signed and filed and made a part of the record herein as of the 20th day of October, 1923, which is within the time originally allowed by the court on the day when judg-

ment was entered herein for presenting, signing, and filing thereof, and the jurisdiction and power of this court to settle and sign the bill of exceptions herein and to make the same a part of the record herein, be preserved and continued as of this term and of said 20th day of October, 1923, until the same shall be duly settled and signed."

ADAM C. CLIFFE, *Judge*. [SEAL.]

405 In United States District Court

[Title omitted.]

Petition for writ of error

Filed Mar. 19, 1924

By defendants, William F. Brims, Stanley Muszalski, B. J. C. Wittman, Anton Sommers, James Smith, Joseph B. Fox, F. C. Bromley, Thomas F. Flynn, W. G. Schardt, William C. White, Daniel J. Ryan, Joseph Veltman, Charles Wright, Thomas Church, and Harry Jensen.

Come now severally the defendants, William F. Brims, Stanley Muszalski, B. J. G. Wittman, Anton Sommers, James Smith, Joseph B. Fox, F. C. Bromley, Thomas F. Flynn, W. G. Schardt, William C. White, Daniel J. Ryan, Joseph Veltman, Charles Wright, Thomas Church, and Harry Jensen, petitioners, and respectfully show that a verdict of guilty was returned against each of them by a jury in the above-entitled cause in the district court, and that judgment and sentence were pronounced by said court on the 22nd day of September, A. D. 1923, upon said verdict against each of your petitioners, by virtue of which said verdict and judgment and sentence each of your petitioners was convicted of a violation of Section I of the act of July 2, 1890, prohibiting conspiracies, combinations, and agreements in restraint of interstate trade and commerce, and petitioner

William Brims was sentenced to pay a fine of $2,500 and costs,

406 F. C. Bromley was sentenced to pay a fine of $250 and costs,

Thomas Church was sentenced to pay a fine of $2,500 and costs, Thomas F. Flynn was sentenced to pay a fine of $100 and costs, Joseph B. Fox was sentenced to pay a fine of $50 and costs, Stanley Muszalski was sentenced to pay a fine of $50 and costs, Daniel J. Ryan was sentenced to pay a fine of $100 and costs, W. G. Schardt was sentenced to pay a fine of $2,500 and costs, James Smith was sentenced to pay a fine of $50 and costs, Anton Sommers was sentenced to pay a fine of $50 and costs, Joseph Veltman was sentenced to pay a fine of $2,500 and costs, William C. White was sentenced to pay a fine of $100 and costs, B. J. G. Wittman was sentenced to pay a fine of $50 and costs, Charles Wright was sentenced to pay a fine of $2,500 and costs, and Harry Jensen $1,000 and costs.

And your petitioners respectfully show that in said judgment and the proceedings had prior thereto in the above-entitled cause certain errors were committed to the prejudice of each of your petitioners, all of which will more fully in detail appear in the assignment of errors which is filed in this court by your petitioners, together with this petition.

Wherefore your petitioners, the said William Brims, Stanley Muszalski, B. J. G. Wittman, Anton Sommers, James Smith, Joseph B. Fox, F. C. Bromley, Thomas F. Flynn, W. G. Schardt, William C. White, Daniel J. Ryan, Joseph Veltman, Charles Wright, Thomas Church, and Harry Jensen, pray that a writ of error may issue in behalf of each of them to said district court, returnable to the United States Circuit Court of Appeals for the Seventh Circuit of the United States for correcting the errors so complained of; and that said writ of error may be made a supersedeas, and that each of your petitioners may be admitted to bail pending the determination of the same, and that all further proceedings in said district court may be suspended and stayed, and that all necessary further orders and processes may be made and issued, to the end that the errors complained of may be corrected by said Circuit Court of Appeals for the Seventh Circuit of the United States, and that said judgment and sentence may be set aside and held for naught.

Each of your petitioners further prays that a citation in due form may issue requiring the United States of America, the defendant in error, to appear in said United States Circuit Court of Appeals for the Seventh Circuit of the United States, and then and there
407 make answer to the assignment of errors made by your petitioners upon the record of the proceedings in said cause; and each of your petitioners herewith presents his assignment of errors in accordance with the rules of the said United States Circuit Court of Appeals and the course and practice of this honorable court.

Your petitioners further say that a joint verdict of guilty was returned by the jury in the above-entitled cause in said district court against other persons with whom your petitioners are impleaded in said cause, and that judgment and sentence were pronounced in the above-entitled cause upon said other persons with whom your petitioners were so found guilty by said verdict; by virtue of which judgment and sentence each of said other persons was required to pay a certain fine; that one bill of exceptions has been settled, allowed, and filed in said district court in said cause on behalf of your petitioners and said other persons with whom your petitioners were found guilty by said verdict; that certain of said other persons with whom your petitioners were so found guilty have also filed in said district court in said cause, each on his own behalf, an assignment of errors together with a petition for a writ of error from said United States Circuit Court of Appeals; and that each of such said other persons in the assignment of errors and petition for a writ of error, so as aforesaid filed by him, prays that the judgment and sentence entered against him may be also reversed and held for naught by the United States Circuit Court of Appeals.

Your petitioners therefore pray that an order may be entered in behalf of each of them, directing the clerk of said district court to make return of the several writs of error respectively prayed for by your petitioners and all said persons with whom your petitions were so jointly found guilty by said verdict, by transmitting to said United States Circuit Court of Appeals a single true copy of the record in the above-entitled cause, said single bill of exceptions, said several assignments of errors filed in said district court in this cause, said several petitions for writs of error filed in said district court in this cause, and of the proceedings had in said district court in the above-entitled case, numbered 8302, necessary to the hearing in said United States Circuit Court of Appeals of said several writs of error.

Your petitioners further pray that the time for returning
408 said writs of error and the transcript of the record in obedience thereto be extended for ninety days after the expiration of the time provided by law therefor.

WILLIAM F. BRIMS.
STANLEY MUSZALSKI.
B. J. G. WITTMAN.
ANTON SOMERS.
JAMES SMITH.
JOSEPH B. FOX.
F. C. BROMLEY.
THOMAS F. FLYNN.
W. G. SCHARDT.
WILLIAM C. WHITE.
DANIEL J. RYAN.
JOSEPH VELTMAN.
CHARLES WRIGHT.
THOMAS CHURCH.
HARRY JENSEN.

HOPE THOMPSON,
Counsel for said petitioners.

[File endorsement omitted.]

409 In United States District Court

[Title omitted.]

Petition for writ of error

Filed March 19, 1924

By defendants, Von Platen & Dick Company, Chicago, Sash, Door & Blind Manufacturing Company, Melrose Mill Company, William Morris & Sons Company, Union Interior Finish Company, Phillip Rinn Company, James A. Dick, Ewald Dierssen, Louis Haring, and H. D. Traeger.

Now come severally the defendants, Von Platen & Dick Company, Chicago Sash, Door & Blind Manufacturing Company, Melrose Mill Company, William Morris & Sons Company, Union Interior Finish Company, Phillip Rinn Company, James A. Dick, Ewald Dierssen, Louis Haring, and H. D. Traeger, your petitioners, and respectfully show that a verdict of guilty was returned against each of them by a jury in the above-entitled cause in the district court and that judgment and sentence were pronounced by said court on

the 22nd day of September, A. D. 1923, upon said verdict against each of your petitioners, by virtue of which said verdict, judgment, and sentence, each of your petitioners were convicted for violation of section 1 of the act of July 2nd, 1890, prohibiting conspiracies, combinations, and agreements in restraint of trade, and petitioner, Von Platen & Dick Company, was sentenced to pay a fine of $2,500.00 and costs, Chicago Sash, Door and Blind Manufacturing Company was sentenced to pay a fine of $2,500.00 and costs, the Melrose Mill Company was sentenced to pay a fine of $2,500.00 and costs, William Morris & Sons Company was sentenced to pay a fine of $5,000.00 and costs, Union Interior Finish Company was sentenced to pay a fine of $2,500.00 and costs, Phillip Rinn & Company was sentenced to pay a fine of $5,000.00 and costs, James A. Dick was sentenced to pay a fine of $500.00 and costs, Ewald Dierssen was sentenced to pay a fine of $500.00 and costs, Louis Haring was sentenced to pay a fine of $500.00 and costs, and H. D. Traeger was sentenced to pay a fine of $500.00 and costs.

410 And each of your petitioners respectfully show that in said judgment and the proceedings had prior thereto in the above-entitled cause, certain errors were committed to the prejudice of each of your petitioners, all of which will more fully appear in the assignment of errors which is filed in this court by your petitioners together with this petition.

Wherefore your petitioners, the said Von Platen & Dick Company, Chicago Sash, Door & Blind Manufacturing Company, Melrose Mill Company, William Morris & Sons Company, Union Interior Finish Company, Phillip Rinn Company, James A. Dick, Ewald Dierssen, Louis Haring, and H. D. Traeger, pray that a writ of error may issue in behalf of each of them to said district court, returnable to the next term of the United States Circuit Court of Appeals, Seventh Circuit of the United States, for correcting the errors so complained of; and that said writ of errors may be made a supersedeas, and that each of your petitioners may be admitted to bail pending the determination of same, and that all of said proceedings in said district court may be suspended and stayed, and that all necessary orders and processes may be made and issued to the end that the errors complained of may be corrected by said Circuit Court of Appeals for the Seventh Circuit of the United States; and that said judgment and sentence may be set aside and held for naught.

Each of your petitioners pray that a citation in due form of law may issue requiring the United States of America, the defendant in error, to appear in said United States Circuit Court of Appeals for the Seventh Circuit of the United States of America, and then and there make answer to the assignment of errors made by your petitioners upon the record of the proceedings in said cause; and each of your petitioners herewith presents his assignment of errors in accordance with the rules of the said United States Circuit Court of Appeals, and the course and practice of this honorable court.

Your petitioners further say that a joint verdict of guilty upon one or more counts of the indictment was returned by the jury in the above-entitled cause, in said district court, with whom your petitioners are impleaded in said cause, and that judgment and sentence were pronounced in the above-entitled cause upon all of said persons with whom your petitioners were so found guilty by said verdict; by virtue of which judgment and sentence, each of said other persons were required to pay a certain fine; that one certain bill of exceptions has been settled, allowed, and filed in
411 said district court in said cause on behalf of your petitioners, and said other persons with whom your petitioners were found guilty by said verdict; that each of said certain other persons with whom your petitioners were so found guilty by said verdict, have also filed in said district court an assignment of errors, together with the petition for a writ of error from the said United States Circuit Court of Appeals; and that each of such other persons in the assignment of errors and petition for writ of error, so as aforesaid filed by him, pray that the judgment and sentence entered against him may also be rejected and held for naught by the United States Circuit Court of Appeals.

Your petitioners therefore pray that an order may be entered in behalf of each of them directing the clerk of said district court to make return of the several writs of error respectively prayed for by your petitioners and all said persons with whom your petitioners were jointly found guilty by said verdict, by transmitting to said United States Circuit Court of Appeals a single true copy of the record in said cause, said bill of exceptions, said several assignments of error filed in said district court in this cause, said several petitions for writ of error filed in said district court in this cause, and of the proceedings had in the district court in the above-entitled cause, necessary to the hearing in said United States Circuit Court of Appeals of said several writs of error.

Your petitioners further pray that the time for returning said writs of error and the transcript of record in obedience thereto be extended ninety days after the time provided by law.

VON PLATEN & DICK COMPANY,
CHICAGO SASH, DOOR & BLIND MANUFACTURING COMPANY.
MELROSE MILL COMPANY.
WILLIAM MORRIS & SONS COMPANY.
UNION INTERIOR FINISH COMPANY.
PHILLIP RINN COMPANY.
JAMES A. DICK.
EWALD DIERSSEN.
LOUIS HARING.
H. D. TRAEGER.
ALBERT FINK,
ROBERT W. CHILDS,
Counsel for petitioners.

[File indorsement omitted.]

412 In United States District Court

[Title omitted.]

Assignments of error by Von Platen & Dick Co. et al.

Filed March 19, 1924

Now come Von Platen & Dick Company, Chicago Sash, Door & Blind Manufacturing Company, Melrose Mill Company, William Morris & Sons Company, Union Interior Finish Company, Phillip Rinn Company, James A. Dick, Ewald Dierssen, Louis Haring, and H. D. Traeger, defendants in the above-entitled cause, and in connection with their petition for a writ of error herein, jointly and severally say that in the record and proceedings of the above-entitled cause in the district court error has intervened to their prejudice and to the prejudice of each of them, and make jointly and severally the following assignment of errors which they and each of them ever occurred in the said proceedings, to wit:

1. The district court erred in overruling the demurrer to the indictment interposed by the defendants herein.

2. The district court erred in denying the defendant, Standard Sash & Door Company's motion for continuance, made when the cause was called for trial, when it appeared that its officers and agent, John Algot Olson, was confined to his bed and unable to attend the trial.

3. The district court erred, at the conclusion of all the evidence offered by the United States, in refusing to grant the motion of the defendants to instruct the jury to find defendants not guilty, the grounds of which said motion were:

413 A

The prosecution has failed to introduce evidence to sustain the charges of the indictment in this, to wit: No evidence has been introduced to sustain the allegation of the indictment that—

(1) The millmen offered to employ as such inside men only carpenters and joiners who were members of the United Brotherhood of Carpenters and Joiners, if such members of the United Brotherhood of Carpenters and Joiners of America would refuse to install any such building material as should be sold by the manufacturing concerns whose plants were located outside of the city of Chicago and outside the State of Illinois.

(2) The above offer, alleged to have been made by the millmen, was accepted by the members of the United Brotherhood of Carpenters and Joiners of America.

(3) By reason of the foregoing offer and its acceptance the manufacturing concerns whose plants were located outside the State of Illinois have been unable to sell in Chicago any appreciable quantity of their building material.

(4) The manufacturing concerns whose plants were located outside the State of Illinois have been unable to deliver in Chicago any appreciable quantity of their material.

(5) The manufacturing concerns whose plants were located outside the State of Illinois have been unable to ship into Chicago any of their building material.

(6) The manufacturing concerns whose plants were located outside the State of Illinois have been compelled to forego carrying on their interstate trade and commerce, so far as the city of Chicago has been concerned.

(7) The said manufacturing defendants, throughout said period of time have manufactured practically all of such building material manufactured in said city.

(8) There was a purpose upon the part of the manufacturing defendants to monopolize the business of supplying building materials in the city of Chicago.

(9) There was a purpose upon the part of the manufacturing defendants to secure excessive prices for their own building materials.

(10) The conspiracy therein alleged has substantially, materially, or unreasonably restrained interstate trade and commerce.

414 (11) There have not been enough carpenters and joiners in Chicago or otherwise obtainable, not belonging to the United Brotherhood of Carpenters and Joiners of America, to perform the work required of them.

(12) The people of the city of Chicago have been compelled by the resulting scarcity of or the exorbitant prices for building material to forego the building of a great number of houses and buildings required by them to house the people and conduct the business of said city.

(13) There was an intent to restrain interstate trade and commerce.

B

To hold that the conduct of defendants, as established by the uncontradicted evidence, constitutes a violation of the penal provisions of the Sherman Act would be in effect—

(1) To deprive defendants of their property without due process of law within the prohibition of the fifth amendment to the Constitution of the United States, namely, of the right to make lawful contracts and agreements.

(2) To deny to defendants the guarantee of the sixth amendment to the Constitution of the United States that in all criminal prosecutions the accused shall be informed of the nature and cause of the accusation.

(4) To deny to defendants the guarantee of the thirteenth amendment to the Constitution of the United States that neither slavery nor involuntary servitude shall exist within the United States.

4. The district court erred at the conclusion of all the evidence in the case in refusing to grant defendants' motion to instruct the

jury to find the defendants not guilty, the grounds of which said motion are the same as those stated in the motion to direct a verdict at the conclusion of the evidence offered by the United States.

5. The district court erred in sustaining the objection of the prosecution to the following question asked of the witness Hooper upon his cross-examination:

"Q. You know how those men stood with reference to the proposed change in article 3, don't you?

"A. I do."

"Q. How did they stand?

"Objected to by the prosecution and objection sustained"—

when the witness had been called by the prosecution and upon
415 his direct examination had testified as to what occured in the meetings of the millmen's association and as to what had been said by various members of the association with reference to the change in section 3 of article 3.

6. The district court erred in excluding from the evidence the cases of Paine Lumber Co. v. Neal, in 244 U. S. 549, and Bossert v. Dhuy, in 117 N. E. 582, when the defendant Brims, having been called as a witness in his own behalf, had testified upon his cross-examination by the prosecution that Mr. Ryan had read excerpts from these cases at the meeting of the joint arbitration board, where the final form of section 3 of article 3 was agreed upon, and had further testified upon his cross-examination by the millmen defendants that he had been influenced in his judgment by what had been read to him, and when the attorney for the United States had said in the presence and hearing of the jury that these cases held just contrary from the way Brims said they held.

7. The district court erred in overruling and denying defendants' motion to withdraw a juror and discharge the balance of the panel from further consideration of the case at the close of the testimony of the defendant Doyle, when it appeared that since his indictment Doyle, in company with his attorney, had had two conferences with the attorneys for the prosecution, in which he had made a full and complete statement as to what his testimony would be, and when it further appeared that the defendant Doyle had supplied the only evidence of purpose upon the part of anyone to bring about a condition under which the millmen might be benefited, and when it further appeared that Doyle had sat during the trial on the side of the defense, and under pretense of being a bona fide defendant had participated in the exercise of peremptory challenges, examination of witnesses, counsels, and general conduct of the defense, and when it further appeared, in view of the circumstances under which the testimony of Doyle was given, that either he or his attorney had some secret arrangement with the prosecution whereby Doyle and his associate cocontractor defendants were to be protected from the consequences of a verdict of guilty, which arrangement "ripened into glad fruition" immediately upon the bringing in of the verdict of guilty.

8. The district court erred in sustaining the objection of the prosecution to the following question asked of defendants, Thomas E. Reynolds and George P. Rinn, upon their direct examination, when they had been called as witnesses in their own behalf:

416 "Q. What was your mental attitude towards the change of article 3, when Mr. Brims was insisting upon it?"—

when the prosecution's theory of guilt was that the millmen were endeavoring to secure the proposed change in section 3 of article 3 in order to eliminate the composition of nonunion foreign manufacturers as a means for increasing their own profit.

9. The district court erred in using, over the exception of defendants, the following language in the general charge delivered to the jury:

"And I charge you that if the Carpenters' District Council, through its agents, entered into an agreement with the manufacturers in Chicago of sash, doors, and interior trim not to install or work upon nonunion goods, and it was intended thereby, or the known necessary result of its enforcement was to substantially interfere with or impede the shipment in interstate commerce of sash, doors, and interior trim into Chicago from factories located outside of the State of Illinois, such an agreement was unlawful, and if you find beyond a reasonable doubt that any or all of the union defendants engaged in such a conspiracy or combination, you should return a verdict of guilty against those so engaging, though their purpose may have been to secure the unionizing of nonresident factories"—

because the instruction made guilt dependent solely upon effect, irrespective of a primary local purpose.

10. The district court erred in using, over the exception of defendants, the following language in its general charge to the jury:

"It is not necessary that the Government prove that the millmen or manufacturing defendants, or any of them, and the labor-union defendants communicated directly with each other and came to a positive understanding as to their course of conduct. If the union defendants and the contractor defendants, or any of them, had under negotiations an agreement which, if carried into effect, would necessarily and directly restrain interstate commerce in sash, doors, and interior trim, and any of the manufacturing defendants counseled, aided, and abetted in having said agreement consummated, knowing why the agreement was desired by the union, and that the result would be to materially restrain interstate commerce in the material mentioned, they and all others who knowingly and purposely joined them in carrying said agreement into effect were guilty, and the desire to prevent a possible or probable strike and the shut-

417 ting down of factories would constitute no legitimate excuse for such conduct"—

because by this instruction the jury were in effect told that—

(a) It was not necessary that a common understanding exist between the millmen and the labor union defendants, though this was the conspiracy charged in the indictment.

(b) The millmen were guilty if they aided and abetted a conspiracy between the labor and contractor defendants, though the millmen and the labor defendants were charged in the indictment as being the parties who entered into the agreement which constituted the conspiracy, and the contractor defendants were charged with having aided and abetted.

(c) If the effect of the proposed agreement between the labor and contractor defendants was to restrain commerce, the millmen were guilty if they merely counseled it, for the purely local purpose of keeping open their own factories.

11. The district court erred in using, over the objection of defendants, the following language in its general charge to the jury:

"Nor is it necessary for the Government to prove that a defendant intended by his actions to violate the anti-trust act, or to restrain interstate commerce. If he purposely engaged in the conspiracy alleged, and the necessary and direct result of such conspiracy was to materially restrain interstate commerce in the material described, he is legally chargeable with intending that result and can not be heard to say the contrary"—

because by this instruction the jury is in effect told that—

(a) A conspiracy can exist without wrongful or criminal intent.

(b) Irrespective of purpose, the crime was complete if interstate commerce was in fact restrained.

(c) Effect is conclusive evidence of purpose.

12. The district court erred in refusing to charge the jury as requested in defendants' request No. 1, as follows:

"The prosecution must prove that the defendants or some of them engaged in the combination or conspiracy described in the indictment. You can not convict any of the defendants of any combination or conspiracy other than the one described in the indictment"—

when said request contained a correct statement of the law, was applicable to each of the defendants and not embodied or implied in the court's charge.

418 13. The district court erred in refusing to charge the jury as requested in defendant's request No. 2, as follows:

"The conspiracy described in the indictment is one alleged to have been entered into between the defendant mill owners and certain members of the United Brotherhood of Carpenters and Joiners of America, the purpose of which was to exclude from Chicago building material manufactured in States other than Illinois. You can not convict any of the defendants of any other or different combination of conspiracy than the one so described"—

when said request contained a correct statement of the law, was applicable to each of the defendants, and not embodied or implied in the court's charge.

14. The district court erred in refusing to charge the jury as requested in defendants' request No. 3, as follows:

"You are instructed that if some of the millmen defendants, knowing that the labor union was about to enforce its policy of refusal to handle nonunion-made material, agreed with some of the carpenter contractor defendants, that the millmen defendants would recommend to their association the granting of the trade discount if the contractor defendants would recommend to their association the yielding to the union of its demand for a change in Article III, you can not convict either the millmen defendants or the contractor defendants, even though you should find that the purpose of the millmen defendants was to exclude from the Chicago market, nonunion material made outside of the State of Illinois, because such a combination between the mill defendants and the contractor defendants is not the combination described in the indictment"—

when said request contained a correct statement of the law, was applicable to each of the defendants, and not embodied or implied in the court's charge.

15. The district court erred in refusing to charge the jury as requested in defendants' request No. 4, as follows:

"You are instructed that the only legal evidence adduced by the Government of a purpose on the part of some of the millmen defendants to exclude from the Chicago market nonunion material manufactured in States other than Illinois, is the testimony of one of the contractor defendants, Doyle, who, according to his own testimony, was an accomplice.

419 "An accomplice is a person who knowingly, voluntarily and with common intent with the principal offender, unites in the commission of the crime"—

when said request contained a correct statement of the law, was applicable to each of the defendants, and not embodied or implied in the court's charge.

16. The district court erred in refusing to charge the jury as requested in defendants' request No. 5, as follows:

"If you find that some of the mill defendants are guilty of the offense charged in the indictment and that the contractor defendant Doyle, knowingly, voluntarily, and with the same intent as the guilty mill defendants, united with them in the commission of the crime, when I instruct you that the contractor defendant Doyle is an accomplice of the guilty mill defendants"—

when said request contained a correct statement of the law, was applicable to each of the defendants, and not embodied or implied in the court's charge.

17. The district court erred in refusing to charge the jury as requested in defendants' request No. 6, as follows:

"You cannot find any of the defendants guilty unless you find as to such defendants, a purpose or intent to keep out of the Chicago market, building material manufactured in States other than Illinois.

"The known effect of certain acts is not necessarily conclusive evidence of the purpose with which such acts are done. The known

effect of such acts is but one of the circumstances to be taken into consideration with all the other evidence in the case, in arriving at a conclusion as to what was in fact the purpose with which the acts were done "—

which said request contained a correct statement of the law, was applicable to each of the defendants, and not embodied or implied in the court's charge.

18. The district court erred in refusing to charge the jury as requested in defendants' request No. 7, as follows:

" Under the penal provisions of the Sherman Act, upon which the indictment in the case is based, it devolves upon the prosecution to prove beyond a reasonable doubt, that the defendants had a criminal intent, and criminal intent means an intent or purpose to do knowingly and willfully, that which is condemned as wrong by the act "—

when said request contained a correct statement of the law, was applicable to each of the defendants, and not embodied or implied in the court's charge.

19. The district court erred in refusing to charge the jury as requested in defendants' request No. 8, as follows:

420 " One of the essential elements to the proved by the Government in this case before you can find the defendants guilty, is that of criminal intent "—

when said request contained a correct statement of the law, was applicable to each of the defendants and not embodied or implied in the court's charge.

20. The district court erred in refusing to charge the jury as requested in defendants' request No. 9, as follows:

" This is a civil action. The defendants are charged with a crime and the presumption of innocence itself is in the nature of evidence of good faith and pure intent, and must prevail until it is overcome by other evidence in the case to your satisfaction and beyond all reasonable doubt "—

when said request contained a correct statement of the law, was applicable to each of the defendants; and not embodied or implied in the court's charge.

21. The district court erred in refusing to charge the jury as requested in defendants' request No. 10, as follows:

" Before you can find the defendants, or any of them, guilty in this case, you must be satisfied beyond all reasonable doubt, that they did the things charged in the indictment, and that too, with the intention of entering into the combination charged, and in determining the question of intent, you must take into consideration all the circumstances shown by the evidence and exclude every just and reasonable hypothesis of good faith "—

when said request contained a correct statement of the law, was applicable to each of the defendants, and not embodied or implied in the court's charge.

22. The district court erred in refusing to charge the jury as requested in defendants' request No. 11, as follows:

"This is not a civil case. It is a criminal prosecution. In such cases, a criminal intention must accompany the act in order to constitute a crime. And the act itself, while it may be the basis for the inference of a criminal intention by the jury, and is frequently irrefragable evidence of such intent, if unaccompanied by such criminal intent, is not crime"—

when said request contained a correct statement of the law, was applicable to each of the defendants and not embodied or implied in the court's charge.

23. The district court erred in refusing to charge the jury as requested in defendants' request No. 12, as follows:

"Only such contracts and combinations are within the prohibitions of the Sherman Act as by reason of intent or the inherent na-
421 ture of the contemplated acts, prejudice the public interest by unduly restricting competition or unduly obstructing the course of trade"—

when said request contained a correct statement of the law, was applicable to each of the defendants, and not embodied or implied in the court's charge.

24. The district court erred in refusing to charge the jury as requested in defendants' request No. 13, as follows:

"You are instructed that before you can find any of the defendants guilty, you must find that the contract, combination, or conspiracy described in the indictment, if one in fact existed, either by reason of intent or the inherent nature of the contemplated acts, prejudice the public interest by unduly restricting competition or unduly obstructing the course of trade"—

when said request contained a correct statement of the law, was applicable to each of the defendants, and not embodied or implied in the court's charge.

25. The district court erred in refusing to charge the jury as requested in defendants' request No. 14, as follows:

"The gist of the crime of conspiracy consists in a corrupt agreement between two or more individuals to do an unlawful act, either as a means or as an end. The criminal quality resides in the intention of the parties to the agreement construed in connection with the purpose contemplated"—

when said request contained a correct statement of the law, was applicable to each of the defendants, and not embodied or implied in the court's charge.

26. The district court erred in refusing to charge the jury as requested in defendants' request No. 15, as follows:

The mere fact that the conspiracy has for its object the doing of an act which may be lawful, followed by the doing of such act, does not constitute the crime of conspiracy, unless the jury find that the parties were actuated by a criminal intent"—

when said request contained a correct statement of the law, was applicable to each of the defendants, and not embodied or implied in the court's charge.

27. The district court erred in refusing to charge the jury as requested in defendants' request No. 16, as follows:

"The actual crime or wrongful purpose must accompany the agreement or combination, and if that is absent the crime of conspiracy has not been committed. It is alike the general rule of law and the dictate of natural justice, that to constitute guilt, there must not only be a wrongful act, but a criminal intention"—

422 when said request contained a correct statement of the law, was applicable to each of the defendants, and not embodied or implied in the court's charge.

28. The district court erred in refusing to charge the jury as requested in defendants' request No. 17, as follows:

"If you believe from the evidence that the millmen's labor committee, in good faith, offered to recommend to their association the trade discount which the contractors were seeking, if the contractors on their part would accept article 3, as then demanded by the labor union, in order to avoid tying up the industry in Chicago, then you are instructed that in making this offer the labor committee of the millmen's association did not violate any of the provisions of the Sherman Act, and your verdict must be not guilty"—

when said request contained a correct statement of the law, was applicable to each of the defendants, and not embodied or implied in the court's charge.

29. The district court erred in refusing to charge the jury as requested in defendants' request No. 18, as follows:

"The federation must be correct. If the motives of the confederates are not corrupt, no criminality can attach to the confederation.

"If you believe from the evidence that the defendants acted in good faith, in the honest belief that they were doing what they had a legal right to do, you must acquit even though the effect of what defendants actually did was to restrain trade"—

when said request contained a correct statement of the law, was applicable to each of the defendants, and not embodied or implied in the court's charge.

30. The district court erred in refusing to charge the jury as requested in defendants' request No. 19, as follows:

"If you should find from the evidence that the primary purpose of the carpenter joiners in refusing to handle nonunion made material was to strengthen their own union and thereby benefit themselves, you must acquit them even though you should find that the effect of their action was to limit and restrain the interstate commerce of the foreign mills"—

when said request contained a correct statement of the law, was applicable to each of the defendants, and not embodied or implied in the court's charge.

31. The district court erred in refusing to charge the jury as requested in defendants' request No. 20, as follows:

"If you should find from the evidence that the primary purpose of the defendant millmen in offering to employ only
423 union carpenters, if the union carpenters would refuse to work upon nonunion-made material, was to benefit themselves, you must acquit such millmen defendant, even though you should find that the effect of their action was to limit and restrain the interstate commerce of the foreign mills"—

when said request contained a correct statement of the law, was applicable to each of the defendants, and not embodied or implied in the court's charge.

32. The district court erred in refusing to charge the jury as requested in defendants' request No. 21, as follows:

"The testimony of an accomplice is always to be received with caution, and weighed and scrutinized with great care by the jury, and it is usual for courts to instruct juries, and you are so instructed in this case, not to regard the evidence of an accomplice unless he is confirmed and corroborated in some material part of his testimony connecting the defendant with the crime by unimpeachable testimony"—

when said request contained a correct statement of the law, was applicable to each of the defendants, and not embodied or implied in the court's charge.

33. The district court erred in refusing to charge the jury as requested in defendants' request No. 22, as follows:

"It is the duty of the court to call your attention to certain rules which obtain in courts of justice in reference to these persons known in law as accomplices. An accomplice, notwithstanding the turpitude of his conduct, is not on that account an incompetent witness. It is the rule in courts of the United States that an accomplice in the commission of a crime is a competent witness, and the Government has the right to use him as a witness. It is the duty of the court to take his testimony, and that of the jury to consider it"—

when said request contained a correct statement of the law, was applicable to each of the defendants, and not embodied or implied in the court's charge.

34. The district court erred in refusing to charge the jury as requested in defendants' request No. 23, as follows:

"Corroborative evidence must relate to some portion of the evidence which is material to the issue, and while it need not got to the whole case yet no evidence can be legally competent and sufficient to corroborate an accomplice which does not tend to confirm the testimony of the accomplice upon a point material to the issue in the sense that it tends to prove the guilt of the defendants"—

424 when said request contained a correct statement of the law, was applicable to each of the defendants, and not embodied or implied in the court's charge.

35. The district court erred in refusing to charge the jury as requested in defendants' request No. 24, as follows:

"A conspiracy to commit a crime can not be proven by the uncorroborated statements and declarations of the alleged conspirators, either during the progress of the alleged conspiracy, or after its termination"—

when said request contained a correct statement of the law, was applicable to each of the defendants, and not embodied or implied in the court's charge.

36. The district court erred in refusing to charge the jury as requested in defendants' request No. 25, as follows:

"A fair and proper test of whether a certain fact, or a certain circumstance, or certain other testimony than that given by an alleged accomplice is corroborative of the evidence which is given by such alleged accomplice, is the following, namely:

"Eliminate or leave out from the case the evidence of the alleged accomplice, and then examine said fact or circumstance, or said other testimony, with a view of ascertaining if said fact, or said circumstance, or said other testimony, constitutes inculpatory evidence—that is, evidence tending to prove that the defendants, or any of them, are guilty in manner and form as charged in the indictment. If said fact or said circumstance, or said other testimony, when so examined, does constitute evidence tending to prove that the defendants, or any of them, are guilty in manner and form as charged in the indictment, then said fact, or said circumstance, or said other testimony, is evidence corroborative of the evidence given by said alleged accomplice. If, however, when said fact or said circumstance, or said other testimony, is so examined, it does not constitute evidence tending to prove that the defendants, or any of them, are guilty in manner and form as charged in the indictment, it is not evidence which is corroborative of the testimony given by such alleged accomplice"—

when said request contained a correct statement of the law, was applicable to each of the defendants, and not embodied or implied in the court's charge.

37. The district court erred in refusing to charge the jury as requested in defendants' request No. 26, as follows:

"No evidence is corroborative of the testimony given by any alleged accomplice in this case, unless, first, it is such evidence
425 as is wholly independent of the testimony given by such alleged accomplice, and unless, second, it is evidence coming from some other source than another alleged accomplice or other alleged accomplice, and unless, third, it is evidence which tends to prove that the defendants, or some of them, are guilty of the conspiracy charged in the indictment"—

when said request contained a correct statement of the law, was applicable to each of the defendants, and not embodied or implied in the court's charge.

38. The district court erred in refusing to charge the jury as requested in defendants' request No. 27, as follows:

"Whether a particular act, contract, or method in furtherance of trade and commerce is illegal, may in doubtful cases turn upon the intent to be inferred from the extent of the control, thereby secured over the commerce, as well as by the method which was used" —

when said request contained a correct statement of the law, was applicable to each of the defendants, and not embodied or implied in the court's charge.

39. The district court erred in overruling and denying defendants' motion in arrest of judgment.

Wherefore the above-named defendants, by reason of the errors aforesaid, jointly and severally pray that said judgment pronounced against them and each of them may be reversed and held for naught.

VON PLATEN & DICK COMPANY.
CHICAGO SASH, DOOR & BLIND MANUFACTURING COMPANY.
MELROSE MILL COMPANY.
WILLIAM MORRIS & SONS COMPANY.
UNION INTERIOR FINISH COMPANY.
PHILIP RINN COMPANY.
JAMES A. DICK.
EWALD DIERKSEN.
LOUIS HARING.
H. D. TRAEGER.
ALBERT FINK.
ROBERT W. CHILDS.
Attorneys for defendants.

[File endorsement omitted.]

426 In United States District Court

[Title omitted.]

Assignment of errors

Filed March 19, 1924

By William F. Brims, Stanley Muszalski, B. J. G. Wittman, Anton Sommers, James Smith, Joseph B. Fox, F. C. Bromley, Thomas F. Flynn, W. G. Schardt, William C. White, Daniel J. Ryan, Joseph Veltman, Charles Wright, Thomas Church, and Harry Jensen, defendants.

Now come the above-named defendants, and in connection with their petition for a writ of error herein, jointly and severally say, that in the record and proceedings of the above-entitled cause in the district court, error has intervened to their prejudice and to the prejudice of each of them, and make jointly and severally the following assignment of errors, which they and each of them aver occurred in the said proceedings, to wit:

I. The district court erred in overruling the demurrer to the indictment interposed by the defendants herein, the grounds of which said demurrer were:

1. Said indictment does not sufficiently state any violation by the said defendants, or any of them, of any law of the United States.

2. The matters alleged in the said indictment do not constitute an offense against the United States.

3. The acts charged in said indictment do not constitute a violation of the act of July 2, 1890 (Sherman Law).

427 4. The said indictment is insufficient, in that it is vague, uncertain, indefinite, and argumentative.

5. The conduct of these defendants, as set out in said indictment, is within the constitutional rights of these defendants, and each of them; and any interpretation of the act of July 2, 1890 (Sherman Law), which would forbid such conduct, is in derogation of the rights guaranteed to these defendants under the fourth, tenth, and thirteenth amendments to the Constitution of the United States.

6. The act of July 2, 1890 (Sherman Law), in so far as it is a criminal statute, is unconstitutional and void, for lack of clearness and certainty.

II. The district court erred at the conclusion of all the evidence offered by the United States in refusing to grant the motion of the defendants to strike out certain evidence offered herein by the Government, for the reason that the same was incompetent, immaterial, and irrelevant as to these defendants, inasmuch as the Government had wholly failed to show that these defendants or either of them were participants in the conspiracy charged in the said indictment; and that said evidence, and each and every portion thereof consisted of acts, words, and documents, done, said, or written outside of the presence of any of these defendants, by persons other than any of these defendants, over which persons these defendants had no control; and there was no evidence whatsoever in the record to connect any of these defendants with the said acts, words, or documents. The evidence specifically pointed out by said motion to strike, is hereinafter more fully indicated in paragraphs V to LIII, inclusive.

III. The district court erred at the conclusion of all the evidence offered by the United States in refusing to grant the motion by the defendants to instruct the jury to find the defendants not guilty, the ground of which said motion was that there was no evidence whatsoever in the record which tended to prove that these defendants participated in the conspiracy charged in the indictment herein.

IV. The district court erred at the conclusion of all the evidence in the case in refusing to grant defendants' motion to instruct the jury to find the defendants not guilty, the ground of which said motion was that there was no evidence whatsoever in the record which tended to prove that these defendants were guilty of the conspiracy charged in the indictment herein.

V. The district court erred in admitting over the objection
428 of the defendants Government's Exhibit 1, being the minutes

of a meeting of Division G, Lumbermen's Association of Chicago held on Tuesday, March 5th, 1918, at which Mr. C. E. Reynolds made a report of the labor committee.

VI. The district court erred in admitting over the objection of the defendants Government's Exhibit 2, being copy of a letter sent by E. E. Hooper to the various members of Division G under date of March 22nd, 1918, referring to negotiations between Division G and the inside carpenters.

VII. The district court erred in admitting over the objection of the defendants Government's Exhibit 3, being copy of another letter written by Mr. Hooper to members of Division G under date of March 29th, 1918, instructing the members of Division G regarding the operation of their plants.

VIII. The district court erred in admitting over the objection of the defendants Government's Exhibit 4, being the minutes of Division G under date of April 19th, 1918, in which it is recited that H. F. Morris made a report of the contract entered into with the carpenters' union, and of a resolution offered by Mr. Diersson approving said report, and other matters.

IX. The district court erred in admitting over the objection of the defendants Government's Exhibit 6, being copy of a letter sent by Mr. Hooper under date of April 22nd, 1918, to members of Division G requesting a memorandum from them of all unshipped purchase orders for millwork, together with other information.

X. The district court erred in admitting over the objection of the defendants Government's Exhibit 7, being copy of a letter written by Mr. Hooper to members of Division G in reference to a meeting of the millmen's committee before the joint arbitration board and a resolution there adopted, and other matter.

XI. The district court erred in admitting over the objection of the defendants Government's Exhibit 8, being a letter under date of May 14th, 1918, addressed to the Lumbermen's Association of Chicago, Division G, from California Manufacturing Company in reply to the letter introduced as Government's Exhibit 7.

XII. The district court erred in admitting over the objection of the defendants Government's Exhibit 9, being a similar letter from Chicago and Riverside Lumber Company to Lumbermen's Association of Chicago.

XIII. The district court erred in admitting over the objection of the defendants Government's Exhibit 10, being a letter signed
429 by Commercial Sash and Door Company addressed to Division G and having attached to it copy of said letter addressed to defendant Brims.

XIV. The district court erred in admitting over the objection of the defendants Government's Exhibit 11, being a letter dated March 8th, 1918, addressed to Lumbermen's Association of Chicago from Commercial Sash and Door Company.

XV. The district court erred in admitting over the objection of the defendants Government's Exhibit 12, being a carbon copy of a

letter Witness Hooper wrote on August 21st, 1918, to Commercial Sash and Door Company.

XVI. The district court erred in admitting over the objection of the defendants Government's Exhibit 13, being a letter under date of August 23rd, 1918, from Commercial Sash and Door Company to the Lumbermen's Association.

XVII. The district court erred in admitting over the objection of the defendants Government's Exhibit 14, being a letter under date of April 24th, 1918, addressed to the Lumbermen's Association from Hartman-Sanders Company.

XVIII. The district court erred in admitting over the objection of the defendants Government's Exhibit 15, being a letter under date of April 24th, 1918, from Morris & Sons Company addressed to Hooper, secretary of the Lumbermen's Association.

XIX. The district court erred in admitting over the objection of the defendants Government's Exhibit 16, being a letter under date of April 22nd, 1918, addressed to the members of Division G signed by E. E. Hooper, secretary, with a notation on the bottom made by South Side Interior Finish Company.

XX. The district court erred in admitting over the objection of the defendants Government's Exhibit 17, being a letter dated May 15th, 1918, addressed to the Labor Committee of Division G from Standard Sash and Door Company replying to Hooper's letter of May 9th, 1918.

XXI. The district court erred in admitting over the objection of the defendants Government's Exhibit 18, being a letter dated July 24th, 1918, addressed to the Carpenters' District Council of Chicago, signed by Von Platen & Dick Company with a notation "Copy to Lumbermen's."

XXII. The district court erred in admitting over the objection of the defendants Government's Exhibit 19, being the minutes of Lumbermen's Association, Division G, of May 13th, 1918, wherein it appears there was a discussion of a special stamp to be used on all goods made in factories of members of Division G, and a sug-
430 gestion was made to employ a man to check up on material delivered to buildings in Chicago and establish a bureau for that purpose.

Also the discussion re entering into an agreement with the Carpenter Contractors' Association as regards future sales to members of that association, and the suggestion by Mr. Reynolds that although the labor committee had time and again taken up this matter and finally arrived at what would be satisfactory to both the parties, yet no action had been taken and he thought the labor committee had gone as far as they could, and it was now a matter for the consideration of the trade relations committee.

XXIII. The district court erred in admitting over the objection of the defendants Government's Exhibit 20, being the minutes of a meeting of Division G, on May 1st, 1918, at which discussion was had relative to relations with the Carpenter Contractors' Associa-

tion; and in which the trade relations committee was instructed to negotiate with the contractors' association along certain lines set out in said exhibit.

XXIV. The district court erred in admitting over the objection of the defendants Government's Exhibit 21, being the minutes of a meeting of Division G, on June 10th and containing a report by Mr. Arthur Root to the effect that the trade relations committee had met with the contractors and found that the contractors preferred to negotiate with the labor committee of Division G, showing also report by Mr. Reynolds for the labor committee on their meeting with the contractors on June 10th, and giving the substance of that conference.

XXV. The district court erred in admitting over the objection of the defendants Government's Exhibit 22, being the minutes of a meeting of Division G on June 4, 1918, in which Mr. Reynolds reported on a contract to be signed, between the contractors' association and Division G, and in which it appeared that members of the contractors' association were present and addressed the meeting.

XXVI. The district court erred in admitting over the objection of the defendants Government's Exhibit 23, being minutes of a meeting of Division G held December 17, 1919, in which a report was made of a conference between the trade relations committee and the contractors' association, and in which it was resolved that committees from the two organizations meet for discussion of conditions.

XXVII. The district court erred in admitting over the objection of the defendants Government's Exhibit 24, being
431 minutes of a meeting of Division G held on March 7, 1919, in which Mr. Root, chairman of the trade relations committee, made a full report of conference with the contractors' association.

XXVIII. The district court erred in admitting over the objection of the defendants Government's Exhibit 25, being minutes of a meeting of Division G on March 8, 1919, in which Mr. Root, chairman of the trade relations committee, submitted proposed articles of agreement with the contractors' association providing for a trade discount from the members of Division G to the members of the contractors' association, and that each group would endeavor to obtain additional members for the other group.

XXIX. The district court erred in admitting over the objection of the defendants Government's Exhibit 26, being minutes of a meeting of Division G on April 15, 1919, in which the same agreement was discussed and it was ordered that copies thereof be mailed to members with instructions to comply with it.

XXX. The district court erred in admitting over the objection of the defendants Government's Exhibit 27, being copy of a letter addressed to Division G signed by Hooper, secretary, advising that the articles of agreement between millmen's division and contractors' association have been ratified by both parties and will become effective May 1, 1919.

XXXI. The district court erred in admitting over the objection of the defendants Government's Exhibit 30, being minutes of a meeting of the Carpenter Contractors' Association on December 7, 1917, in which a proposed new agreement with the Carpenters' District Council was discussed.

XXXII. The district court erred in admitting over the objection of the defendants Government's Exhibit 31, being minutes of a meeting of the Carpenter Contractors' Association of January 9, 1918, in which it is recited that a committee was appointed to meet with the millmen of Chicago to treat with them for better treatment of the contractors and the trade, and in which Mr. Ashbeck moved that the eight cardinal principles, or article 3 of the present agreement, should remain intact.

XXXIII. The district court erred in admitting over the objection of the defendants Government's Exhibit 32, being minutes of a meeting of the Carpenters Contractors' Association, February 13, 1918, in which the committee reported no meeting with the millmen.

XXXIV. The district court erred in admitting over the
432 objection of the defendants Government's Exhibit 33, being minutes of a meeting of the Carpenter Contractors' Association March 13, 1918, in which discussion appears relative to negotiations with the Millmen's Association and mention is made of the proposed new agreement with the Carpenters' District Council, and it is voted that article 3 remain as in the old agreement.

XXXV. The district court erred in admitting over the objection of the defendants Government's Exhibit 34, being a meeting of the Carpenter Contractors' Association of April 10th, 1918, in which section 3 of article 3 was submitted and adopted in the form it appears in the agreement (Government's Exhibit 35).

XXXVI. The district court erred in admitting over the objection of the defendants Government's Exhibit 36, being minutes of a meeting of the Carpenter Contractors' Association March 27, 1918, in which agreement between Millmen's Association and Carpenter Contractors' Association was considered.

XXXVII. The district court erred in admitting over the objection of the defendants Government's Exhibit 37, being minutes of a meeting of the Carpenter Contractors' Association on May 8, 1918, in which Mr. Doyle reported on conferences between committees of the Millmen's Association and the Contractors' Association.

XXXVIII. The district court erred in admitting over the objection of the defendants Government's Exhibit 38, being minutes of a meeting of the Carpenter Contractors' Association on October 9, 1918, at which agreement between the mill owners and contractors' association, was discussed.

XXXIX. The district court erred in admitting over the objection of the defendants Government's Exhibit 39, being minutes of a meeting of the Carpenter Contractors' Association January 8, 1919, in which agreement between the mill owners and the contractors was again discussed.

XL. The district court erred in admitting over the objection of the defendants Government's Exhibit 40, being minutes of a meeting of the Carpenter Contractors' Association March 12, 1919, in which the same agreement was again discussed.

XLI. The district court erred in admitting over the objection of the defendants Government's Exhibit 41, being minutes of a meeting of the Carpenter Contractors' Association May 14, 1919, in which Mr. Doyle reported that he had consummated an agreement with the mill owners.

433 XLII. The district court erred in admitting over the objection of the defendants evidence of witness Robert A. Pottinger, to the effect that he had trouble in installing material, including windows, sashes, doors, frames, etc., which he purchased from Anderson & Lind Manufacturing Company, a Chicago concern. That he had twenty-five union men working for him; that part of the building was already trimmed; that a note was left with his girl stating that the work was stopped by the order of William Brims on account of nonunion material; that he went to see Brims to try to get the thing settled two or three times; that Brims finally told him that if he would give him a letter agreeing not to buy any more material from Anderson & Lind Manufacturing Company he would let him go ahead; that he wrote a letter to Brims, and Brims came out and said, "What are you trying to do, Pottinger, put me in jail?" That Pottinger said, "No; I am trying to get my building done." That Brims then told Pottinger's foreman "to go ahead and use that trim and don't tell anybody we stopped you." That Brims said there was an injunction against him taken out by the Anderson & Lind Company; that Brims didn't interfere further on that job; that later Pottinger had the same difficulty with Brims on another building, for which he had bought material from Anderson & Lind Manufacturing Company in Chicago; that later Church and Brims stopped this job and wouldn't let him use the material; that later he bought material for the balance of the job from Rittenhouse & Embree, a Chicago firm, after which Anderson & Lind Manufacturing Company procured an injunction against him preventing him from using union-made material; that he later had some trouble on four bungalows, material for which he had purchased from Anderson & Lind Manufacturing Company in Chicago.

XLIII. The district court erred in admitting over the objection of the defendants evidence of L. G. Anderson, an officer of Anderson & Lind Manufacturing Company, a Chicago concern; that he attended meetings of Division G where the millmen were discussing a trade discount of 25% which they proposed to give to the contractors; that at one meeting the committee from the contractors attended they discussed article 3 in the agreement between the district council and the contractors; that he doesn't recall what this committee said, but thinks one of them, Mr. Green, said that the contractors had entered into their agreement with the union on the promise of the millmen to grant a trade discount; that the

434 Millmen's Association was responsible for article 3 being in the agreement, and that Harry Morris was responsible for it more than anyone else; that his firm bought some material from concerns in Wisconsin, including Payne Lumber Company and the McMillen Company; that Mr. Traeger, of the Von Platen & Dick Company, told him that it would be too bad if they had to buy doors from their competitors and asked him what they were going to do now that article 3 was put in the agreement; that he told Traeger that if it wouldn't permit his material to be used he would try to get work in other places; that during those years his firm offered goods to contractors in Chicago and they refused to take them, saying they wouldn't be permitted to use them because they were not union made, mentioning Robert Pottinger and others; that Pottinger told him they would stop his job and wouldn't permit him to use Anderson & Lind material; that Paul Jensen refused to buy for the same reason, giving the names of several other firms who also refused to buy for the same reasons; that Chester M. McGrath and Company figured a job but said they had taken it up with the district council and had been told they couldn't use Anderson & Lind material; that Christ Nelson said the district council told him he could not use it; that Nelson said their figures were lower and he would like to give them the job but had been told by the district council that he could not use it because he would have trouble. Gunderson Bros. told him that they were afraid they might have trouble and didn't dare give Anderson & Lind the work.

XLV. The district court erred in admitting over the objection of the defendants evidence of H. M. Anderson; that he is a salesman for Anderson & Lind Manufacturing Company of Chicago; that during 1918–19–20 and up to September, 1921, he tried to sell material for that company and could not do it for specific reasons that were assigned. He names firms who refused to buy; the reason they assigned was on account of the agreement "they were afraid to take a chance of using our material on account of the union label not being on it."

XLV. The district court erred in admitting over the objection of the defendants evidence of A. G. Johnson, salesman for Anderson & Lind Manufacturing Company; that during the years 1918–19–20–21 he tried to sell material to people who refused to buy it and gave as reason that they did not have the union label on their material, naming five or six fims.

435 XLVI. The district court erred in admitting over the objection of the defendants evidence of Walter E. Madson; that he is connected with the firm of Madsen & Ibson Manufacturing Company; that his firm furnished entire contract for building erected by Niels Buck in Chicago; that it purchased this material from C. L. Ibsen Company in Chicago and that C. L. Ibsen Company bought the material from Gould Manufacturing Company at Oshkosh, Wisconsin; that Ibsen is the representative of the Gould Manufacturing Company and that he sold the material as the agent

of the Gould Company; that he had a conversation with defendant Charles Wright relative to putting on nonunion-made sashes and doors, and there was a price stated by Wright of about $1,000 to permit it; that Wright said he had to consult with some one but didn't say who; that witness met Wright later and agreed upon $500.00; that the material was installed without the union label upon payment of $500.00 to Wright; that his firm furnished material to a contractor named Carlson for eighty-nine bungalows, part of which material they manufactured themselves and part they purchased from C. L. Ibsen Company, in Chicago; that the Ibsen Company got the doors from the Gould Company or Roach & Musser, he doesn't know which; that he had no trouble about installing material; made the same arrangement on that job as on the previous one with Mr. Wright; paid Wright $700 for permission to install that material; that Wright stamped the union label on the doors in Ibsen's warehouse in Chicago.

XLVII. The district court erred in admitting over the objection of the defendants evidence of Joseph J. Miller, associated with K. R. Beak & Company, builders, to the effect that in 1919 or 20 his firm was erecting several buildings in Oak Park, Illinois; that the contractor, Axel Johnson, purchased the trim from Anderson & Lind Manufacturing Company in Chicago; that the job was stopped for about one week; that he paid defendant Wright money to get the work resumed; that he paid defendant Wright money on another occasion in the summer of 1919 in connection with constructing forty-two bungalows in Chicago, the inside trim for which had been purchased from Anderson & Lind Manufacturing Company in Chicago; that he paid Wright on that job because Wright informed him that the trim bore no union label and that he was apt to have trouble with the carpenters in getting them to put the trim on and that witness negotiated with Wright to make arrangements with the carpenters to put it on; that he told Wright they
436 would pay him if he would do that without having the job stopped; that he paid him $500 with the understanding that the job would not be stopped and that Wright would get good men to work on the job. In all he paid Wright $900.

XLVIII. The district court erred in admitting over the objection of the defendants evidence of L. H. Dodd to the effect that he attended meetings of Division G where article 3 was discussed; that some of the members thought it would be a nice thing and some were opposed to it; that some of the millmen manufacture more than others and they thought they could produce the goods in their own factories, and naturally they were in favor of article 3 being in the agreement. Several of them expressed themselves in that way.

XLIX. The district court erred in admitting over the objection of the defendants evidence of Thomas B. Harned, who was associated with the Liquid Carbonic Company in Chicago, which manufactures carbonic gas, soda fountains, back bars, store fixtures, and all sorts of soda fountains; that they installed one for the Owl Drug Com-

pany in Chicago, all material for which they manufactured in Chicago in an open shop with the exception of the tin work, which was union made; that the said fountain and back bar were shipped to the Owl Drug Company at Madison and Clark Streets, Chicago, and a day or two later witness went downtown and met representative of carpenters' union, William G. Schardt. Shardt said: "Mr. Harned, that back bar has been made with nonunion labor." Witness said: "Yes." Shardt said: "That will have to be made by union labor or I will pull a strike on this building or you can pay a fine of $1,500 to my union." He protested the amount of the fine; said he would talk to his superior officers and meet Shardt the next day. He did so and paid Shardt $1,000 in bills; that Shardt had previously refused to take his check; that after the money was paid to Shardt the material was installed by nonunion men; doesn't know anything about any union carpenters working on the building at all; that if this arrangement hadn't been carried out it would have meant a lawsuit against his firm for damages by the Owl Drug Company, as they had specified time in which to complete this job; that he had talked with Mr. Haring, of the Melrose Mill Company, and that Haring said he would like to do business with the Payne Lumber Company, but that the unions had him tied up and told him that if they found a single case where he was buying outside mill work again they would shove him out for good.

437 L. The district court erred in admitting over the objection of the defendants evidence of Paul D. Jensen, Chicago contractor, that in 1919–20 he was building bungalows in Chicago, using inside trim purchased from J. P. King and Anderson & Lind Manufacturing Company in Chicago; that the carpenters claim they couldn't work on it; that he had a conversation with Defendant Veltman, who was business agent for the union, and Veltman told him the carpenters have no right to put it in because it wasn't union made; that Veltman told him he wouldn't put up any more because he had to use union-made material; that he told Veltman he had already bought material for all of the bungalows; that Veltman told him he could finish them, but there was some expense to the union on that account, and that he gave Veltman $50.00; that later he paid Veltman additional sums in connection with erecting other bungalows, a total of $200 or less; that Veltman asked for more money but didn't get it; that union carpenters refused to work on Anderson & Lind stock because it was against their rules; that Veltman had said to him, "If you use any more of it we will stop the carpenters and take them away," and they were ordered off the job by Veltman; that two of the carpenters were fined by the union for working on nonunion material, $25.00 a piece, and that witness paid the fine; that they told him that they had quit because Veltman told them to. He had told them that they couldn't work on the stuff and if they

did he would fine them once more. This was after he had paid Veltman the money he spoke of before.

LI. The district court erred in admitting over the objection of the defendants Government's Exhibit 64, being minutes of the proceedings of the outside men's trial board of the Carpenters' District Council held July 22, 1920, wherein the two carpenters mentioned by Witness Jensen were tried on charges of violating rules of the union, and giving testimony of witnesses in that hearing, including Veltman, and showing the fine assessed against the two carpenters.

LII. The district court erred in admitting over the objection of the defendants testimony of Frank J. Heitmann to discussions in the meetings of Division G relative to employing a man in Chicago to visit various buildings where construction work was in progress to determine whether or not the sash, door, and trim bore the union label; that witness suggested that it would be well to first get the advice of an attorney on this proposition; that it should be referred to their attorney for further advice as to the legality of such
438 a thing; that article 3 of the contract between the contractors and the Carpenters' District Council was discussed at these meetings during March and April; that in 1919 he had a conversation with E. D. Beals, Olson, Traeger, Henry King, and others, and that Beals said that if they could arrange with the Carpenters' District Council of Chicago to the unionizing of their plant they could make arrangements with Chicago concerns to furnish union doors; that at a meeting of Division G June 24, 1919, attended by Mr. Green and Mr. Doyle of the contractors' association that Mr. Green stated in substance that their association should be entitled to a trade discount; that their organization having made an agreement with the union accepting article 3 as they had it written should have something of a return in the way of a trade discount. Witness believes that Green said that they were promised something in return; that some committee of the millmen's organization had got some promise as to a trade discount.

LIII. The district court erred in admitting over the objection of the defendants Government's Exhibit 74 to 82, inclusive, which were identical except as to the signature of one party, and each being an agreement between Hardwood Products Company and certain Chicago mill owners, some of whom are defendants herein.

LIV. The district court erred in admitting over the objection of the defendants Government's Exhibit 83, being a letter on the letterhead of the Lumbermen's Association of Chicago dated March 19, 1919, addressed to Division G, signed by the secretary, Hooper, and stating in substance that Division G had held a very interesting meeting on March 18; that the trade relations committee had reported on their conference with the Carpenter Contractors' Association, submitting an agreement (copy of which was inclosed), which the Division G had adopted; that the arbitration committee appointed in connection with this agreement consisted of Mr. Lockwood and Mr. Knight; that it was decided to hold monthly meet-

ings and receive reports from all committees; that they expected a splendid report from the committee on market conditions at the next meeting; that Division G had finally aroused from its lethargy and expected to legislate on all matters of interest to the members.

LV. The district court erred in admitting over the objection of these defendants the testimony of D. H. Doyle, wherein he
439 told of a meeting of Division G attended by himself and Mr. Green, and stated conversations and arguments there presented.

LVI. The district court erred in admitting over the objection of these defendants Doyle's testimony to the effect that the trade discount had something to do with article 3; that the millmen claimed that by getting article 3 released they might be able to negotiate the discount.

LVII. The district court erred in admitting over the objection of these defendants the testimony of Witness Doyle that the mill owners said that because of article 3 they had been benefited and might be able to pay a discount; they claim that business would be better; that he heard this half a dozen times; that it was common talk and it was part of an argument that they used in negotiations with the mill owners; that he said he told them he thought the contractors were entitled to this discount because the mill owners had been greatly benefited by article 3; that it was stated in the meeting of Division G that Mr. Rinn or Mr. Morris was more responsible for article 3 than anyone else, and that it had been rumored that the labor committee of the millmen were more responsible for article 3 than anyone else; that it was common talk; that this argument was used all the time at those meetings of the committee; that article 3 was mentioned several times during the course of negotiations.

LVIII. The district court erred in admitting over the objection of these defendants the testimony of Witness Doyle, that the millmen made a claim that by getting article 3 released that might be able to negotiate the discount, and that this same argument was used in all the negotiations he had with the millmen.

LVIX. The district court erred in admitting over the objection of these defendants the evidence of Witness Doyle: "I think Mr. Rinn made a statement at some of these conferences, that if he agreed to recommend the corrections of certain abuses and discounts, we should be able to recommend changing article 3 in accordance with Mr. Brims's then demands."

LX. The district court erred in admitting over the objection of these defendants testimony of Witness Doyle, that he could not remember that either Mr. Rinn or Mr. Reynolds or Mr. Morris ever wanted to shut out nonunion-made material in this market, "but I have heard such a remark made by them at public meetings when the committees got together and met at four or five meetings;
440 I heard them say something like that on one of these occasions; that it was common discussion."

LXI. The district court erred in admitting over the objection of these defendants millmen's Exhibit 1, purporting to be a written agreement between the Carpenter Contractors' Association and the Millmen's Association of Chicago, and providing, among other things, that the millmen will not submit estimates to owners for extra mill work while building is under charge of contractors; to give members of the contractors' association a trade discount of 15% and 5% for cash; estimates to other parties to be regular prices; contractors' association to discourage the purchase of any mill work from lumber dealers; that article 3 in the agreement of the Carpenters' District Council read: "There shall be no prison-made material used."

LXII. The district court erred in admitting over the objection of these defendants testimony of Witness Doyle: "I have heard it stated that the labor committee of the millmen were more responsible for article 3 than anyone else; I heard it stated in our association room, but couldn't tell you the name of the person who made the statement. It was common talk." That one of the reasons assigned was the getting a raise of wages for the millmen employees; that it may be a fact that the labor committee of the millmen had absolutely nothing to do with the change in article 3, but rumors said different. "I thought they had something to do with it, because it was connected with their business and it was the foundation of a raise in wages of their employees."

LXIII. The district court erred in admitting over the objection of these defendants the testimony of Witness Doyle; that the connection which there was between the making of the outside agreement with the unions and in a dispute which the contractors had with the mill owners was the granting of an increase in the wages to their employees; that the millmen were discussing the granting of wages with their employees under the agreement.

LXIV. The district court erred in admitting over the objection of these defendants the testimony of Witness Doyle relative to a meeting of the contractors' association, wherein Mr. Brockob asked Mr. Milord to amend his motion to read: "To adopt section 3, article 3, and hold in abeyance until we have an agreement with the millmen"; that notwithstanding the fact that the contractors had in their hands the agreement of the mill owners offering to give a trade dis-
441 count if the contractors would accept the proposition of Mr. Brims to change article 3, the association turned it down at that time.

LXV. The district court erred in excluding from the evidence union defendant's Exhibit 6, being a certified copy of the decision of the Court of Appeals of the State of New York in the case of Bossort vs. Dhuy, reported in volume 221, page 342, of the New York reports, after Witnesses Brims and Doyle had testified that this decision had been read in meetings of the arbitration board and had influenced their decision in the execution of an agreement (Government's Exhibit 35), and after the witness Doyle had identified the

specific document (union defendant's Exhibit 6) as the document referred to and read from, and after counsel for the union defendants had offered in open court to introduce evidence to show that the Carpenters' District Council had sent a committee to New York in the latter part of 1917 to investigate litigation there involving the same form of agreement as was here contemplated, and to ascertain the exact facts and the law as there decided, and that this committee had secured and brought back union defendant's Exhibit 6; that this exhibit was afterwards read and discussed by the Carpenters' District Council and that it influenced their action all along the line in negotiating the new agreement in Chicago.

LXVI. The district court erred in overruling the motion of counsel for union defendants to strike out, so far as the union defendants were concerned, all those portions of the evidence of Witness Doyle which recited conversations and doings by persons other than the union defendants, and in their absence, being the portions of evidence which are indicated in the foregoing paragraphs covering exceptions to evidence of Witness Doyle.

LXVII. The district court erred in admitting over the objection of these defendants the testimony of Witness Rinn relative to negotiations between committees of the Mill Owners' Association and of the Contractors' Association, wherein witness discusses a proposed agreement between the two associations and discusses contents of this agreement, during which witness discussed with Doyle the outside agreement with the Carpenters' District Council, and Doyle told him there was only one stumbling block, and that was section 3 of article 3, and witness said to Doyle: "I will tell you what we will do,
Mr. Doyle; you go ahead and make peace with your union
442 even if you have to give article 3 like Brims wants it. If you
will make peace with your union, even if you have to consider this change in article 3, we will take the things you want and recommend them to our association. Now that is what we will do for you. Go ahead and make peace." That after further discussion one of the millmen's committee wrote on the proposed agreement then before them a provision to put the foregoing suggestion into effect; that the result was that at that meeting a definite agreement was reached between the paries so far as recommendation to their respective organizations were concerned, which agreement was subsequently reduced to writing and is millmen's Exhibit 1.

LXVIII. The district court erred in admitting over the objection of these defendants the testimony of Witness Rinn, to the effect that Mr. Reynolds told him that Doyle had requested that the agreement between the two associations be signed, and had sent the memo over to the Lumbermen's Association; that certain men over there had signed it.

LXIX. The district court erred in admitting over the objection of these defendants the testimony of Witness Rinn as to the arguments and discussion which took place at the meeting of Division G on

April 19th, wherein he details at length the remarks and attitude of the various members of the association and the criticisms they offered of his committee, and in which Rinn says: "At that time I told the members of our association that we had agreed to recommend the trade discount if Doyle would agree to recommend that his members change article 3 in the way then demanded by Brims." * * * I told them that I told Mr. Doyle we would recommend these articles if he would make peace with the union and not subject this industry to a strike, etc.; that he said to Doyle: "Go as far as yielding to this article if you have to, but, whatever you do, don't let a strike tie up the work."

LXX. The district court erred in admitting over the objection of these defendants the testimony of Witness Rinn relative to the suggestion of Mr. Lockwood to employ a man to check up on materials in Chicago and to establish a bureau for that purpose; that Lockwood's purpose was to engage a man to ride around on a motor cycle to different jobs and ascertain whether or not nonunion stuff was being installed and the reasons for securing information.

LXXI. The district court erred in admitting over the objection of these defendants the testimony of Witness Rinn as to what
443 transpired at the meeting of Division G on May 21, and wherein Rinn discusses terms of the proposed agreement between the mill owners and the Contractors' Association and relates opinions expressed there by the other members of the association.

LXXII. The district court erred in admitting over the objection of these defendants the evidence of Witness Rinn, relative to a meeting of Division G about June 24, 1918, and excerpts from the minutes of that meeting relative to negotiations between the two associations and Rinn's statement of the remarks of Mr. Doyle and Mr. Green at this meeting relative to trade discount.

LXXIII. The district court erred in admitting over the objection of these defendants the evidence of Witness Rinn relative to minutes of Division G for January 20, 1920, showing resolution and discussion relative to lists of O. K'ed material, and Rinn's statement as to why this information was desired, and what the members present said regarding their stocks on hand.

LXXIV. The district court erred in admitting over the objection of these defendants the evidence of Witness Rinn regarding millmen's Exhibit 1, stating the circumstances under which it was prepared and the contents of paragraph 5 relative to article 3.

LXXV. The district court erred in denying the motion of defendants to withdraw a juror and discharge the balance of the panel from further consideration of the case at the conclusion of the testimony of Defendant Doyle, when it appeared that Doyle and his attorney had been in conference with the United States attorney and that Doyle had made to him a substantial statement of what his testimony would be, and had (as appeared from the subsequent discharge of the contractor defendants), made a bargain with the United States attorney to testify to all intents and purposes as a

Government witness, but under the guise of testifying as a defendant, his attorney having been in constant conference with other attorneys for the other defendants previous to and throughout the trial.

LXXVI. The district court erred in using, over the exception of the defendants, the following language in the charge to the jury:

"I charge you that if by said article 3 of section 3 of this contract it was intended that there should be a restriction against nonunion-made sash and doors and interior trim, which restrictions
444 should be enforced by a refusal of the members of the labor union to install such material in buildings, and that if the necessary effect of such refusal would be to substantially restrain the flow of commerce in such material into the city of Chicago from outside the State of Illinois, by preventing manufacturers of such material outside the said State from selling and shipping their said product into the city of Chicago, then the execution of such contract was unlawful, and any act designed or having the effect of carrying out and accomplishing the purpose intended by such agreement, was also unlawful."

Because:

1. It tells the jury that members of a labor union may not lawfully refuse to work on certain kinds of material if the necessary result of such refusal is to substantially restrain the flow of interstate trade.

2. In effect, it tells the jury that workmen in Chicago are under legal obligation to work on any kind of material offered them, if such material has been manufactured in another State and shipped into Chicago.

3. The instruction is contrary to the Constitution of the United States, in that it deprives defendants of their right to freedom of contract, freedom to work or not to work as they see fit, and lays upon them a legal duty to work against their will and against their interest, merely because their refusal to work will result in a diminution in the flow of interstate commerce.

4. The instruction virtually assumes that the refusal of union carpenters to install nonunion material in Chicago would prevent out-of-State manufacturers from selling and shipping such material to Chicago, and so effect an unlawful restraint of interstate trade; whereas it is not true that the refusal of union carpenters in Chicago to use or work on certain kinds of material prevents the sale and shipment of such material. It is no more than the exercise of the workmen's constitutional rights, and if interstate commerce languishes because such workmen decline to affirmatively aid it, no law has been violated.

5. The instruction is erroneous in stating that "any act designed or having the effect of carrying out and accomplishing the purpose, * * * was unlawful." Assuming that some defendants had conspired among themselves to restrain interstate trade, it is

not true that any act "having the effect" of carrying out their purpose was unlawful.

LXXVII. The district court erred in using, over the
445 exception of the defendants, the following language in the charge to the jury:

"It is therefore insisted that there is a fatal variance between the proof and the allegations of the indictment. However, upon this question I charge you that it is not material what the object was that the labor union intended to accomplish by the adoption of article 3, provided that in its accomplishment it was necessary that interstate commerce in doors, sash, and interior trim be substantially restrained."

Because:

1. It tells the jury that it is not necessary for the Government to prove the allegation in the indictment, that the purpose of the defendants was to restrain interstate trade.

2. It tells the jury that a course of conduct by workmen, with a lawful purpose to benefit themselves, and having to do solely with the kind of material on which they will work in Chicago, becomes unlawful if the necessary result is that interstate trade is substantially restrained.

3. It assumes that the constitutional rights of citizens of a State to contract freely, to work or not to work, and to fix the terms upon which they will accept employment, are rendered void by an act of Congress.

4. The instruction holds any course of conduct unlawful, no matter what its purpose, if a necessary result is to substantially restrain interstate trade.

On this theory every stroke or lockout of miners, railroad employees, or even carpenters is unlawful, since interstate trade is necessarily restrained thereby, as the court used the word "restrained."

5. The instruction lays a legal obligation on workmen, contrary to the Constitution, to work on certain kinds of material against their will and interest, in order that interstate trade in that kind of material may be aided.

6. The instruction tells the jury that it is unlawful for workmen, for lawful purposes, to refuse to work in Chicago on certain material which has passed through and is no longer in interstate commerce, if the necessary though indirect result is to substantially restrain interstate commerce in other material of the same class.

7. The instruction (as do others given) erroneously assumes that interstate trade was "restrained"; whereas the whole evi-
446 dence shows that what these defendants did was to refuse, in order to advance their own interests, to install nonunion-made trim, no matter where it was manufactured. A refusal to do something which would aid interstate commerce is not a restraint of commerce. Out of State manufacturers and their customers were not interfered with by any affirmative act of these defendants.

LXXVIII. The district court erred in using, over the exception of the defendants, the following language in the charge to the jury: "It is also insisted that the union defendants are not guilty, because it is lawful for laborers to form themselves into unions and promote the welfare of its several members by inducing the owners of factories to work only union men. This contention is true if not carried too far. It is unquestionably lawful for laboring men to organize themselves into unions. It is also lawful for them to agree upon and maintain by peaceful means a strike against their employers to secure higher wages or better working conditions, or any other lawful object. They may also endeavor to induce the operators of factories other than those at which they are employed to employ none but union men, and may by persuasion and argument induce the employers of operators other than those employing them to join or organize themselves into a union. But there is a limit beyond which they can not lawfully extend their activities. The antitrust act, under the provision of which this action is prosecuted, applies to labor organizations and laboring men the same as to any other individuals, corporations, or voluntary associations. And I charge you that if the Carpenters' District Council, through its agents, entered into an agreement with the manufacturers in Chicago of sash, doors, and interior trim not to install or work upon nonunion-made goods, and it was intended thereby, or the known necessary result of its enforcement was to substantially interfere with or impede the shipment in interstate commerce of sash, doors, and interior trim into Chicago from factories located outside of the State of Illinois, such agreement was unlawful, and if you find beyond a reasonable doubt that any or all of the union defendants engaged in such a combination or conspiracy, you should return a verdict of guilty against those so engaging, though their purpose may have been to secure the unionizing of nonresident factories."

Because:

1. In saying "if the Carpenters' District Council, through
447 its agent, entered into an agreement with the manufacturers in Chicago of sash, doors, and interior trim not to install or work upon nonunion-made goods," the court stated a hypothesis to sustain which there was not a particle of evidence, direct, indirect, or circumstantial; the whole evidence of both Government and defense witnesses on this subject was positive that no such agreement was made or ever discussed.

2. Apart from the fact that there was no evidence whatever to sustain the hypothesis, the statement of law is erroneous, in that it holds that workmen may not freely contract with their employers, for lawful purposes, as to the terms and conditions of their employment in Chicago, if the known necessary result of such conduct is to impede interstate commerce.

3. The instruction would lay upon workmen the legal duty to work against their will and interest in order to aid interstate trade.

4. The instruction assumes that a mere refusal of union carpenters to work on certain kinds of material is an unlawful restraint of interstate trade in that kind of material.

LXXIX. The district court erred in using, over the exception of the defendants, the following language in the charge to the jury:

"The Government has introduced certain witnesses who testified that they paid certain defendants, who were business agents of the district council, sums of money in order that they might be able to have nonunion material installed. It is, of course, a question of fact for you to decide whether such payments, or either of them, were actually made. If you find they were, then as to what consideration should be given this testimony. I charge you that if the material which was permitted to be installed because of the payments to the business agent of money, had been shipped into Chicago from outside of the State of Illinois, such evidence may be considered for two purposes—first, to determine whether or not a burden was imposed upon interstate commerce because of the conspiracy, providing you find such conspiracy existed, and, second, to determine the attitude of the recipient of the money to the conspiracy; that is, whether or not he was engaging therein. If, however, the material was not shown to have been shipped into Chicago from outside the State of Illinois, as is the state of evidence relating to the material used in connection with the soda fountain in the Owl Drug Store, the evidence can only be considered for the second purpose; that is, in determining whether
448 he who received the money was participating in and carrying out the conspiracy. Under no circumstances can you consider such testimony in determining the guilt or innocence of any defendant except the one who received such a payment of money."

Because:

1. The evidence regarding the Owl Drug Store was wholly incompetent for any purpose. It did not indicate in the slightest degree whether any defendant "was participating in carrying out the conspiracy."

2. The evidence of payment of money to any defendant in the circumstances shown, was incompetent, immaterial, irrelevant, and did not tend to prove the charge laid in the indictment.

These were isolated instances of private graft, secretly obtained. There was no evidence to connect any other defendant with these acts or to show that they formed part of any common plan to restrain interstate trade. On the contrary, the evidence shows that such acts were contrary to the policy of the union and that the union was trying to put a stop to such practices.

LXXX. The district court erred in using, over the exception of the defendants, the following language in the charge to the jury:

"It is not necessary that the Government prove that the millmen or manufacturing defendants, or any of them, and the labor union defendants communicated directly with each other and came to a positive understanding as to their course of conduct. If the union

defendants and the contractor defendants, or any of them, had under negotiation an agreement which if carried into effect would necessarily and directly restrain interstate commerce in sash, doors, and interior trim, and any of the manufacturing defendants counselled, aided, and abetted in having said agreement consummated, knowing why the agreement was desired by the union and that the result would be to materially restrain interstate commerce in the material mentioned, they and all others who knowingly and purposely joined them in carrying said agreement into effect were guilty; and the desire to prevent a possible or probable strike and shutting down of factories would constitute no legitimate excuse for such conduct."

Because:

1. The instruction tells the jury it is not necessary that the Government prove the charge laid in the indictment; that if the evidence showed some other unlawful agreement. then the defendants were guilty.

449 2. In saying "If the union defendants and the contractor defendants, or any of them, had under negotiation an agreement which, if carried into effect, would necessarily and directly restrain interstate commerce in sash, doors, and interior trim," the court states a hypothesis not based on the evidence, but contrary to it. The contract between the union and the contractor defendants is in evidence, in toto, undisputed. It does not "necessarily and directly restrain interstate commerce in sash," etc.

LXXXI. The district court erred in refusing to charge the jury as requested by the defendants, as follows:

"The union defendants and their organization had a lawful right to adopt in good faith as a general policy that union carpenters would not install nonunion millwork, and the fact that in pursuance of that general policy they refused to install nonunion millwork made in other States, does not of itself constitute a violation of the Sherman law."

Because:

1. It is a correct statement of the law; it was applicable and pertinent in this case, and was not covered by any other instruction given.

LXXXII. The district court erred in refusing to charge the jury as requested by defendants, as follows:

"The making of the agreement shown in evidence between the manufacturers of mill work and the district council (Government's Exhibit 5) was not a violation of the Sherman Act."

Because:

1. It is a correct statement of the law; it was applicable and pertinent in this case, and was not covered by any other instruction given.

LXXXIII. The district court erred in refusing to charge the jury as requested by defendants, as follows:

"The making of the agreement shown in evidence between the Carpenter Contractors' Association and the Carpenters' District Council was not of itself a violation of the Sherman law."

Because:

1. It is a correct statement of the law; it was applicable and pertinent in this case, and was not covered by any other instruction given.

LXXXIV. The district court erred in refusing to charge the jury as requested by defendants, as follows:

"Workmen are under no legal obligation to work on any
450 kind of material. If they deem it to their interest to refuse to work on nonunion-made material, they have a legal right to do so, and the mere fact that such material may have been made in some other State does not render such refusal unlawful nor in violation of the Sherman Act."

Because:

1. It is a correct statement of the law; it was applicable and pertinent in this case, and was not covered by any other instruction given.

LXXXV. The district court erred in refusing to charge the jury as requested by defendants, as follows:

"Workmen, either individually or as a union, may impose whatever conditions they see fit to their employment, and, if denied, may refuse or quit the service."

Because:

1. It is a correct statement of the law; it was applicable and pertinent in this case, and was not covered by any other instruction given.

LXXXVI. The district court erred in denying the written motion of these defendants and of each of them, in arrest of judgment, the grounds of which motion were as follows:

1. The matters and things, alleged in the indictment, do not constitute an offense against the United States.

2. The matters and things alleged in the indictment do not constitute a violation of the Sherman Act.

3. The verdict of the jury is not supported by any evidence in the case.

4. The evidence in the case does not prove, or tend to prove, that the said defendant, or either of them, were guilty of any offense against the United States.

5. A judgment against these defendants, or either of them, on the record in this case deprives such defendants of fundamental rights guaranteed to them by the fourth and the tenth and the thirteenth amendments to the Constitution of the United States.

6. Any interpretation of the Sherman Act which permits the rendition of a judgment in this case against these defendants, or either of them, is contrary to and in violation of the Constitution of the United States.

7. The United States has no constitutional power or authority to render judgment upon the record in this case against these defendants or either of them.

Wherefore, the said defendants, by reason of the errors
451 hereinabove set out, jointly and severally pray that the judgment herein against them and each of them, may be reversed.

HOPE THOMPSON,
Attorney for the Above Named Defendants.

In United States District Court

[Title omitted.]

Order allowing writ of error

March 19, 1924

On this 17th day of March, 1924, came before the undersigned William F. Brims, Stanley Muszalski, B. J. C. Wittman, Anton Sommers, James Smith, Joseph B. Fox, F. C. Bromley, Thomas F. Flynn, W. G. Schardt, William C. White, Daniel J. Ryan, Joseph Veltman, Charles Wright, Thomas Church, Harry Jensen, Von Platen & Dick Company, Chicago Sash, Door & Blind Mfg. Co., Melrose Mill Company, William Morris & Sons Company, Phillip Rinn Company, James A. Dick, Ewald Dierssen, Louis C. Haring, and H. D. Traeger, and Union Interior Finish Company, defendants in the above-entitled cause, and each of said defendants
452 presented to the undersigned his petition for the allowance of a writ of error to the said district court from the United States Circuit Court of Appeals for the Seventh Judicial Circuit, for the correction of errors complained of in said petition together with his assignment of errors intended to be urged by him in support of said writ of error, said petitions in behalf of the above-named defendants and said assignments of error on behalf of each of the above-named defendants having heretofore been filed in the above-entitled cause in the office of the clerk of said district court in accordance with the rules of said United States Circuit Court of Appeals.

Upon consideration whereof, it is hereby ordered by the undersigned, in pursuance of the prayers of said petitioners for writs of error filed on behalf of each of the above-named defendants, that writs of error be allowed to each of the above-named defendants as prayed for in the petitions filed by them, and that each of said writs of error operate as a supersedeas staying the execution of judgment and sentence pronounced in said district court upon each of said above-mentioned defendants, during the pendency of said writs of error; and that, upon service of said writs of error, the said William F. Brims be admitted to bail upon his entering into a good and sufficient bond in the sum of three thousand dollars, and it appearing to the court that said William F. Brims has heretofore filed his bond herein and that the same has been approved

by this court, it is ordered that said bond stand as and for the bond herein provided for.

That said Stanley Muszalski be admitted to bail upon his entering into a good and sufficient bond in the sum of one hundred dollars.

That said B. J. C. Wittman be admitted to bail upon his entering into a good and sufficient bond in the sum of one hundred dollars.

That said Anton Sommers be admitted to bail upon his entering into a good and sufficient bond in the sum of one hundred dollars.

That said James Smith be admitted to bail upon his entering into a good and sufficient bond in the sum of one hundred dollars.

That said Joseph B. Fox be admitted to bail upon his entering into a good and sufficient bond in the sum of one hundred dollars.

That said F. C. Bromley be admitted to bail upon his entering into a good and sufficient bond in the sum of three hundred dollars.

453 That said Thomas F. Flynn be admitted to bail upon his entering into a good and sufficient bond in the sum of two hundred dollars.

That said W. G. Schardt be admitted to bail upon his entering into a good and sufficient bond in the sum of three thousand dollars.

That said William C. White be admitted to bail upon his entering into a good and sufficient bond in the sum of two hundred dollars.

That said Daniel J. Ryan be admitted to bail upon his entering into a good and sufficient bond in the sum of two hundred dollars.

That said Joseph Veltman be admitted to bail upon his entering into a good and sufficient bond in the sum of three thousand dollars.

That said Charles Wright be admitted to bail upon his entering into a good and sufficient bond in the sum of three thousand dollars.

That said Thomas Church be admitted to bail upon his entering into a good and sufficient bond in the sum of three thousand dollars.

That said Harry Jensen be admitted to bail upon his entering into a good and sufficient bond in the sum of fifteen hundred dollars.

That said Von Platen & Dick Company be admitted to bail upon its entering into a good and sufficient bond in the sum of three thousand dollars.

That said Chicago Sash, Door & Blind Mfg. Co. be admitted to bail upon its entering into a good and sufficient bond in the sum of three thousand dollars.

That said Melrose Mill Company be admitted to bail upon its entering into a good and sufficient bond in the sum of three thousand dollars.

That said William Morris & Sons Company be admitted to bail upon its entering into a good and sufficient bond in the sum of fifty-five hundred dollars.

That said Phillip Rinn Company be admitted to bail upon its entering into a good and sufficient bond in the sum of fifty-five hundred dollars.

That said James A. Dick be admitted to bail upon his entering into a good and sufficient bond in the sum of six hundred dollars.

That said Ewald Dierssen be admitted to bail upon his
454 entering into a good and sufficient bond in the sum of six hundred dollars.

That said Louis C. Haring be admitted to bail upon his entering into a good and sufficient bond in the sum of six hundred dollars.

That said H. D. Traeger be admitted to bail upon his entering into a good and sufficient bond in the sum of six hundred dollars.

That said Union Interior Finish Company be admitted to bail upon its entering into a good and sufficient bond in the sum of fifty-five hundred dollars.

Each of said bonds to be conditioned as required by law with surety to be approved by the clerk of said district court.

On further consideration whereof, it is also hereby ordered by the undersigned that the clerk of the district court make return of said writs of error allowed to the above-named defendants, by transmitting to said United States Circuit Court of Appeals a single true copy of the record and bill of exceptions and proceedings and all things concerning the same in the above-entitled cause No. 8302, in said district court, and also the several assignments of error and the several petitions for writs of error filed in the above-entitled cause by the defendants above named, and that the time for returning said writs of error and the transcript of record in obedience thereto be extended for ninety days after the expiration of the time provided by law therefor.

Enter

ADAM C. CLIFFE, *Judge.*

455 In United States District Court

[Title omitted.]

Order staying execution of judgment

Oct. 20, 1923

The defendants, Von Platen & Dick Company, Chicago Sash, Door & Blind Manufacturing Co., Melrose Mill Co., Wm. Morris & Sons Co., Union Interior Finish Co., Phillip Rinn Co., James A. Dick, Ewald Dierssen, Louis C. Haring, H. D. Traeger, William F. Brims, F. C. Bromley, Thomas Church, Thomas F. Flynn, Joseph B. Fox, Stanley Muszalski, Daniel J. Ryan, W. G. Schardt, James Smith, Anton Somers, Joseph Veltman, William C. White, B. J. G. Wittman, Charles Wright, and Harry Jensen, by their attorneys, and the United States, by its attorneys, now come into open court and upon motion of the defendants it is ordered by the court that the time for filing assignment of error and for signing and filing of the bill of exceptions herein, as the same may be settled and signed, be and the same is hereby extended until the 20th day of December, 1923, and that whenever so settled and signed the same shall stand as settled and signed and filed and made a part of the record herein as of the 20th day of October, 1923, which is within

the time originally allowed by the court on the day when judgment was entered herein for the presenting, signing, and filing thereof, and the jurisdiction and power of this court to settle and sign the bill of exceptions herein, and to make the same a part of the record herein be preserved and continued as of this term and of said 20th day of October, 1923, until the same shall be duly settled and signed. It is further ordered that execution of the judgments entered against each and every of said defendants be and the same hereby is further stayed until the 20th day of December, 1923.

456 And the said defendants and each of them, by their attorneys, now enter their motions for a writ of error, and the same is hereby allowed upon the filing of a bond in the sum hereinafter set opposite the name of said respective defendants, which said bond when filed by such respective defendant, shall act as a supersedeas.

Von Platen & Dick Company	$3,000.00	William Brims	$3,000.00
Chicago Sash, Door & Blind Manufacturing Co	$3,000.00	F. C. Bromley	$ 300.00
Melrose Mill Co	$3,000.00	Thomas Church	$3,000.00
Wm. Morris & Sons Co	$5,500.00	Thomas F. Flynn	$ 200.00
Union Interior Finish Co	$5,500.00	Joseph B. Fox	$ 100.00
Phillip Rinn Co	$5,500.00	Stanley Muszalski	$ 100.00
James A. Dick	$ 600.00	Daniel J. Ryan	$ 200.00
Ewald Dierssen	$ 600.00	W. G. Schardt	$3,000.00
Louis C. Haring	$ 600.00	James Smith	$ 100.00
H. D. Traeger	$ 600.00	Anton Somers	$ 100.00
		Joseph Veltman	$3,000.00
		William C. White	$ 200.00
		B. J. G. Wittman	$ 100.00
		Charles Wright	$3,000.00
		Harry Jensen	$1,500.00

457 In United States District Court

[Title omitted.]

Order extending time

Dec. 18, 1923

The defendants, Union Interior Finish Company, Melrose Mill Company, William Morris & Sons Company, Phillip Rinn Company, Chicago Sash, Door & Blind Manufacturing Company, Von Platen and Dick Company, Louis C. Haring, Ewald Diersen, H. D. Traeger, James A. Dick, William F. Brims, Stanley Muszalski, B. J. C. Wittman, Anton Sommers, James Smith, Joseph B. Fox, F. C. Bromley, Thomas F. Flynn, W. G. Schardt, William C. White, Daniel J. Ryan, Joseph Veltman, Charles Wright, Thomas Church, Harry Jensen, in person and by their attorneys, and the United States by its attorneys, now come into open court and upon motion of the defendants, it is

Ordered by the court that the time for signing and filing of the bill of exceptions herein, as the same may be settled and signed, be and the same is hereby extended until the 20th day of March, 1924, and that whenever so settled and signed, the same shall stand

as settled and signed and filed and made a part of the record herein as of the 20th day of October, A. D. 1923, which is within the time originally allowed by the court, on the day when judgment was entered herein for the presenting, signing, and filing thereof, and the jurisdiction and power of this court to settle and sign the bill of exceptions herein, and to make the same a part of the record herein, be preserved and continued as of this term and of said 20th day of October, A. D. 1923, until the same shall be duly settled and signed.

458 It is further ordered, That the execution of the judgments entered against each and every of said several defendants be, and the same hereby is, further stayed until the 20th day of March, A. D. 1924.

ADAM C. CLIFFE, *Judge.*

In United States District Court

[Title omitted.]

Order to file bill of exceptions

Mar. 7, 1924

On motion of the defendants herein by their attorneys, it is ordered by the court that the bill of exceptions herein be approved and filed.

459 In United States District Court

[Title omitted.]

Stipulation re bill of exceptions

Filed April 4, 1924

It is hereby stipulated and agreed, by and between the parties hereto, that the original bill of exceptions, filed in the above-entitled cause, may be used in the United States Circuit Court of Appeals in lieu of a copy thereof.

HOPE THOMPSON,
Counsel for defendants, Brims, Muszalski, Whittman, Sommers, Smith, Fox, Bromley, Flynn, Schardt, White, Ryan, Veltman, Wright, Church, and Jensen.

R. W. CHILDS,
Counsel for defendants, Von Platen & Dick Company, Chicago Sash, Door & Blind Mfg. Co., Melrose Mill Company, William Morris & Sons Company, Phillip Rinn Company, Union Interior Finish Company, James A. Dick, Ewald Dierssen, Louis C. Haring, and H. D. Traeger.

EDWIN A. OLSON,
United States Attorney for the Northern District of Illinois.

[File endorsement omitted.]

460 In United States District Court

[Title omitted.]

Order re original bill of exceptions

April 4, 1924

Upon stipulation and the court being fully advised in the premises, it is ordered that the original bill of exceptions be incorporated in the transcript to the Circuit Court of Appeals in lieu of copy.

In United States District Court

Writ of error and return

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the District Court of the United States for the Northern District of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court before you, or some of you, between United States of America, plaintiff, and William F. Brims, Stanley Muszalski, B. J. G. Wittman, Anton Sommers, James Smith, Joseph B. Fox, F. C. Bromley, Thomas F. Flynn, W. G. Schardt, William C. White, Daniel J. Ryan, Joseph Veltman, Charles Wright, Thomas Church, Harry Jensen, Von Platen & Dick Company, Chicago Sash, Door & Blind Mfg., Melrose Mill Company, William Morris & Sons Company, Phillip Rinn Company, James A. Dick, Ewald Dierssen, Louis C. Haring and H. D. Traeger, and Union Interior Finish Co., a manifest error hath happened, to the great damage of the said William F. Brims, Stanley Muszalski, B. J. G. Wittman, Anton Sommers, James Smith, Joseph B. Fox, F. C. Bromley, Thomas F. Flynn, W. G. Schardt,
461 William C. White, Daniel J. Ryan, Joseph Veltman, Charles Wright, Thomas Church, Harry Jensen, Von Platen & Dick Company, Chicago Sash, Door & Blind Mfg., Melrose Mill Company, William Morris & Sons Company, Phillip Rinn Company, James A. Dick, Ewald Dierssen, Louis C. Haring, and H. D. Traeger, and Union Interior Finish Co., as by their complaint appears. We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Seventh Circuit, together with this writ, so that you have the same in the said United States Circuit Court of Appeals for the Seventh Circuit at Chicago within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said United States Circuit

Court of Appeals for the Seventh Circuit may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Wm. Howard Taft, Chief Justice of the United States, the 19th day of March in the year of our Lord one thousand nine hundred and twenty-four.

[SEAL.] JOHN H. R. JAMAR,
Clerk of the District Court of the United States for the Northern District of Illinois.

Allowed by
ADAM C. CLIFFE, *Judge.*

462 NORTHERN DISTRICT OF ILLINOIS, *ss:*

In obedience to the within writ, I herewith transmit to the United States Circuit Court of Appeals for the Seventh Circuit a true and complete transcript of the record and proceedings in the foregoing entitled cause this 17 day of April, A. D. 1924.

[SEAL.] JOHN H. R. JAMAR,
Clerk United States District Court,
Northern District of Illinois.

In United States District Court

[Title omitted.]

Praecipe for transcript of record.

To: John H. R. Jamar, Esq., Clerk of the said Court:

You will please prepare a transcript of the record in the above-entitled cause to be filed in the United States Circuit Court of Appeals, pursuant to writs of error issued out of said court in above cause, and include in such transcript of record the following:

1. Return of indictment #8302 and order to file same.
2. Indictment.
3. Demurrers filed 9/15.
4. Order of Oct 17-1923, overruling demurrers.
5. Pleas of not guilty.
6. Verdict of the jury.

463 7. All motions to direct verdicts made by said defendants and all orders denying the same, and exceptions to such orders.

8. All motions for new trial made by said defendants and all orders denying same and exceptions to such orders.
9. All motions in arrest of judgment made by said defendants and all orders denying same and exceptions to such orders.
10. Judgments and sentences.
11. The joint and several assignment of errors of said defendants.
12. Petitions for writs of error filed by said defendants.
13. Order granting said writs of error.

14. Order allowing time to file Bill of Exceptions and all orders allowing extension thereof.
15. Citations.
16. Bill of Exceptions.
17. Praecipe.

_____ _____,

Counsel for defendants, Brims, Muszalski, Wittman, Sommers, Smith, Fox, Bromley, Flynn, Schardt, White, Ryan, Veltman, Wright, Church, and Jensen.

_____ _____,

Counsel for defendants, Von Platen & Dick Company, Chicago Sash, Door & Blind Mfg. Co., Melrose Mill Company, William Morris & Sons Company, Phillip Rinn Company, Union Interior Finish Company, James A. Dick, Ewald Dierssen, Louis C. Haring and H. D. Traeger.

Service of the above praecipe acknowledged and copy thereof received this _____ day of March, 1924.

_____ _____,

United States Attorney for the Northern District of Illinois.

464 [Clerk's certificate to foregoing transcript omitted in printing.]

465 [Citation in usual form showing service on Edwin A. Olson, filed Apr. 4, 1924, omitted in printing.]

466 [Caption omitted.]
[Appearances of counsel omitted in printing.]

468 In United States Circuit Court of Appeals

Seventh Circuit

Before Hon. Evan A. Evans, 3436

WILLIAM F. BRIMS ET AL.	Error to the District Court of United States for the Northern District of Illinois, Eastern Division
vs.	
UNITED STATES OF AMERICA	

Order extending time to file briefs

Sept. 8, 1924

On presentation of a stipulation of counsel, it is now here ordered that the time in which the defendant in error may file its brief in this cause, be, and the same is hereby extended twelve (12) days.

It is further ordered that this cause be placed upon the calendar of the October, 1924, session of this court.

469 In United States Circuit Court of Appeals

[Title omitted.]

Order setting cause

Oct. 7, 1924

It is now here ordered that this cause be, and the same is hereby set down for hearing Wednesday, October 29, 1924.

470 In United States Circuit Court of Appeals

[Title omitted.]

Order continuing cause

Oct. 29, 1924

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel and on oral arguments by Mr. Hope Thompson and Mr. Albert Fink, counsel for plaintiffs in error, and by Mr. Roger Shale, counsel for defendant in error, and the arguments of counsel not being concluded, the further hearing is continued until nine-thirty o'clock tomorrow morning.

471 *Minute entry of argument and submission*

Oct. 30, 1924

[Omitted in printing.]

In United States Circuit Court of Appeals for the Seventh Circuit

[Title omitted.]

Opinion

June 4, 1925

Before Alschuler, Evans, and Page, Circuit Judges

Evans, Cir. J.: Defendants, sixty-eight in number, were charged with a violation of section 1 of the Sherman Anti-Trust Act. Forty-one were convicted. A new trial was granted as to several, and twenty-six joined in the prosecution of this writ of error.

The Government, for convenience sake, has classified defendants into contractor, manufacturer, and union-labor defendants.

The prosecution arises out of agreements made between these several defendants, which agreements dealt with the manufacture and installation of certain building material, commonly known as millwork, and which included window and door fittings, door and window sashes, base boards, picture moldings, cornices, book cases, panel wainscotting, etc.

The indictment alleges that in order to monopolize the business of supplying and installing building material and to
472 secure excessive prices therefor, the defendants conspired together to prevent concerns outside of the city of Chicago and in other States than Illinois from selling and delivering their building material in, and shipping the same to, the said city of Chicago in competition with said building materials of manufacturing defendants located in Chicago.

For many years (1900 to 1918) the contractors' association and the union labor organizations had entered into agreements (usually bien'ial) whereby terms of employment, hours of labor, and compensation, were fixed. Each of the agreements prior to 1918, contained a clause (familiarly known as article 3, Section 3, which read:

"There will be no restriction on the use of any manufactured material except prison made."

In 1918, this section was amended to read:

"There shall be no restrictions against the use of any manufactured material, except nonunion and prison made. This shall not apply to machine-made flooring, ceiling, or ceiling partition, plain lumber, or hardware of any kind."

It was the insertion of the word "nonunion" that brought about a situation which resulted in the institution of these criminal proceedings.

It appeared from the evidence that prior to 1918 a large amount of material was shipped into the city of Chicago for use therein, from Oshkosh, Wisconsin, the millwork industry being well developed in that city, and the labor therein employed being nonunion. It was evidently the hope of the union organizations to force the unionizing of these nonunion shops through a modification in the agreement.

The results were decisive. One company, the Morgan Sash and Door Company, of Oshkosh, Wisconsin, for the years 1910 to 1918, shipped to Chicago an average of $250,000 worth of millwork. After this agreement was made their business dropped to $61,000 in '19 and to $50,000 in '20. Many of the nonunion shops in Oshkosh showed a similar decline in volume of shipments into Chicago.

One assignment of error, based on the alleged failure of proof to support the charge, or the alleged fatal variance between allegation and proof, is, we think, well taken and makes it unnecessary to consider other questions, and facts not material to this issue will not be related.

473 The indictment charged defendants with "combining or conspiring to prevent manufacturing plants located outside of

the city of Chicago and in other States than Illinois from selling and delivering their building material in and shipping the same to said city of Chicago." The indictment thus drawn charged an interference with, an obstruction to, or a prevention of, shipments in interstate commerce.

The proof, however, disclosed merely an agreement between defendants whereby union defendants were not to work upon nonunion-made millwork.

In the city of Chicago, the manufacturing defendants employed union labor. The contractors who also employed union labor, could, by this agreement, purchase only union-made millwork. Otherwise, the union defendants would not install it. This naturally resulted in an advantage to the manufacturing defendants whose shops were unionized. Practically all of the manufacturing plants in the city of Chicago were unionized. Therefore, there was a resulting benefit to such Chicago plants.

In other words, prior to this agreement the millwork used in Chicago was supplied by the manufacturing companies in Chicago and the territory adjacent thereto. Large quantities came from Oshkosh, Wisconsin, where there were nonunion shops. The Chicago shops or factories, being largely union shops, prospered under this agreement at the expense of the nonunion shops in other localities.

In his opening statement to the jury, counsel for the Government said:

"The evidence will show that this material was referred to, by this labor committee * * * as outside material. The agreement itself had the word 'nonunion' inserted, and we will show to you gentlemen, that all of these meetings together was to eliminate from the Chicago market, not nonunion-made material, but materials made outside of Chicago."

Had the proof supported this promise, the case would have been similar to and controlled by the Boyle case, 259 Fed. 803. However, the Government failed to show that the real agreement was not to eliminate "nonunion-made material, but materials made outside of Chicago."

Nonunion-made goods were made in Illinois as well as out-
474 side of Illinois. Union-made millwork was also produced outside of Illinois, as well as in the State. In other words, demand for millwork in Chicago could be supplied from all parts of the United States. Local manufacturers and those situated in Illinois but outside of Chicago could supply the millwork as well as the factories of Wisconsin, Michigan, and other States. It was a matter of choice whether these factories employed nonunion or union labor.

The agreement which the defendants entered into merely dealt with mill work which was the product of nonunion labor. It mattered not where the mill work was produced, whether in or outside of Illinois, if it bore the union label. The restriction was not

against the shipment of mill work into Illinois. It was against non-union-made mill work produced in or out of Illinois.

We find no evidence which would support a finding that the agreement embodied in article 3 of section 3 was not the real agreement of the parties. Wherefore, we conclude there is a fatal variance and the evidence does not sustain the indictment.

The judgment is reversed, and the cause remanded for further proceedings.

PAGE, C. J.

I concur in the reversal.

A true copy:

Teste:

_____,

Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

475 In United States Circuit Court of Appeals

[Title omitted.]

Judgment

June 4, 1925

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said district court in this cause be, and the same is hereby reversed; and that this cause be, and the same is hereby, remanded to the said district court for further proceedings.

476 [Clerk's certificate to foregoing transcript omitted in printing.]

476i In Supreme Court of the United States

Order allowing certiorari

Filed October 26, 1925

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

○

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In the Supreme Court of the United States

OCTOBER TERM, 1926

No. 212

UNITED STATES OF AMERICA, PETITIONER

v.

WILLIAM F. BRIMS, STANLEY MUSZALSKI, B. J. G. Wittman, Anton Sommers, James Smith, Joseph B. Fox, F. C. Bromley, Thomas F. Flynn, W. G. Schardt, William C. White, Daniel J. Ryan, Joseph Veltman, Charles Wright, Thomas Church, Harry Jensen, Von Platen & Dick Company, Chicago Sash, Door & Blind Manufacturing Company, Melrose Mill Company, William Morris & Sons Company, Union Interior Finish Company, Phillip Rinn Company, James A. Dick, Ewald Dierssen, Louis Haring, and H. D. Traeger.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

PREVIOUS OPINIONS IN THE PRESENT CASE

The opinion of the Circuit Court of Appeals for the Seventh Circuit is reported in 6 F. (2d) 98, and appears also at R. 351.

GROUNDS OF JURISDICTION

The judgment of the Circuit Court of Appeals was entered June 4, 1925. (R. 354.) The Government's petition for writ of certiorari was filed September 2, 1925, under authority of Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925. (C. 229, 43 Stat. 936, 938.) (See also *United States* v. *Gulf Refining Co.*, 262 U. S. 738.) The petition was granted by this Court October 26, 1925. (R. 354.)

STATEMENT OF THE CASE

INTRODUCTION

The respondents (hereinafter called defendants) were indicted (R. 1) in the District Court of the United States for the Northern District of Illinois, Eastern Division, for violating the Sherman Antitrust Law (Act of July 2, 1890, c. 647, 26 Stat. 209).

The jury returned a verdict of guilty as to 40 defendants, consisting of both corporations and individuals. (R. 10.) A new trial was granted as to the 5 individual contractor defendants (R. 10), who thereafter upon motion of the prosecution were dismissed from the case. (R. 10.)

Motion on behalf of the remaining defendants was made to set aside this verdict and grant a new trial, and likewise motion in arrest of judgment was made, both of which motions were overruled (R. 17), and sentences consisting of fines in various

amounts were imposed on all the remaining defendants (R. 17). Ten of the original defendants paid fines to which they were sentenced by the court in its judgment, and are not parties hereto.

Those remaining defendants obtained a writ of error to the Circuit Court of Appeals for the Seventh Circuit (R. 343), which court, in a written opinion dated June 4, 1925 (R. 351), reversed the judgment of the District Court.

In its opinion reversing the judgment of the District Court, the Circuit Court of Appeals based such action solely on one assignment of error. That court said (R. 352, 354):

> One assignment of error, based on the alleged failure of proof to support the charge, or the alleged fatal variance between allegation and proof, is, we think, well taken and makes it unnecessary to consider other questions, and facts not material to this issue will not be related.
>
> The indictment charged defendants with "combining or conspiring to prevent manufacturing plants located outside of the city of Chicago *and in other States than Illinois from selling and delivering their building material in and shipping the same to said city of Chicago.*" The indictment thus drawn charged an interference with, an obstruction to, or a prevention of, shipments in interstate commerce.
>
> The proof, however, disclosed merely an agreement between defendants whereby

union defendants were not to work upon nonunion-made millwork.

* * * * *

We find no evidence which would support a finding that the agreement embodied in Article 3 of Section 3 was not the real agreement of the parties. Wherefore, we conclude there is a fatal variance and the evidence does *not* sustain the indictment. (Italics ours.)

THE FACTS

Millwork or inside trim as the term is used in this proceeding and in this brief includes articles of woodwork manufactured from rough lumber, which go into the construction of buildings of all kinds, such as window frames and door frames; window sashes and doors which go into those frames; door jambs and trimmings around those jambs; baseboards; chair rails; picture moldings; wood cornices; and in some cases china cabinets, book cases, and paneled wainscoting. (R. 234–235.)

For many years past there have been three classes of concerns and persons largely engaged in the City of Chicago in the manufacture, purchase, and sale and installation of this millwork in structures of all kinds.

The first class consisted of corporations and concerns engaged in the manufacture of this millwork. They also purchased from other manufacturers situated without the State of Illinois, particularly in the State of Wisconsin and in Southern States,

millwork to be sold to building contractors who were engaged in installing such millwork in buildings in the City of Chicago. (R. 81, 82, 210, 255, 244, 239.)

There were somewhat less than 100 such manufacturing concerns located in the City of Chicago, of which number 37 of the largest and most important—carrying on the major portion of such business (R. 265)—were members of Division G of the Lumbermen's Association (R. 234, 21).

Another class were building contractors engaged in the purchase both from local and out of state manufacturers of this millwork and the installation of the same in buildings in the City of Chicago. From five to six hundred of these building contractors, representing the major portion of that business, were members of an association known as the Carpenter Contractors' Association. (R. 56, 209, 244, 239.)

A third class consisted of carpenters who were engaged either in the manufacture of such millwork in the factories of the above-described manufacturers, being known as inside carpenters, or who were engaged as employees of such building contractors in the installation of this millwork in the aforementioned structures, being known as outside carpenters.

About 17,000 of these carpenters, representing substantially all so engaged in the City of Chicago, were members of a labor union known as the United Brotherhood of Carpenters and Joiners of America, a voluntary association, hereinafter desig-

nated as The Brotherhood. These 17,000 union carpenters in Chicago were grouped into 37 local unions; 3,500 inside carpenters were grouped in six local unions; 13,500 outside carpenters were grouped in about 31 local unions. (R. 80, 88.)

The chief local governing body of all these carpenters, both inside and outside, was the Carpenters' District Council, composed of about 100 delegates elected annually by the various local unions (R. 80), most of whose acts of importance had to be approved by a referendum vote of the local membership (R. 91). This District Council was empowered to negotiate labor agreements between the employers and the carpenters, but as a matter of actual practice such labor agreements were separately negotiated, subject to the oversight and approval of the council, between the manufacturers and the inside carpenters and between the contractors and the outside carpenters by committees from the inside carpenters' local unions and from the outside carpenters' local unions, as hereinafter more particularly described. (R. 91.)

It was in this District Council that the inside carpenters' local unions and the outside carpenters' local unions came into contact for the purpose of formulating and executing common purposes or plans.

For many years preceding the year 1918 separate labor agreements (usually biennial) had been entered into between the manufacturing members of Division G and the inside carpenters, and between

the members of the Contractors' Association and the outside carpenters.

The inside agreement expired March 31, 1918, and the outside agreement expired May 31, 1918. (R. 84, 25.)

In the negotiation and execution of the new inside agreement, Division G was represented by its Labor Committee consisting of defendants Rinn, Reynolds, Morris, and Olson, and the inside carpenters were represented by a committee specially elected by the membership of the inside local unions for the purpose, and consisting of defendants Fox, Somers, Muszalski, Wittman, and Smith (R. 24, 27, 189.)

In the negotiation of the new outside agreement the contractors were represented by their Arbitration Committee consisting of witness Doyle and four other members of the Contractors' Association (R. 68), and the outside carpenters were represented by their Arbitration Board consisting of defendants White, Schardt, Flynn, and Ryan (R. 68).

Defendant William F. Brims was President of the District Council and was present at and dominated the negotiations by the union carpenters both with Division G and with the Contractors' Association. (R. 72, 189, 194–195, 204, 209.) He was a party to both new agreements. (R. 26–27, 68.)

The new inside agreement (R. 24–27) was signed on April 18, 1918, and the new outside agreement (R. 57) on April 10, 1918. (R. 139.)

The most convincing evidence with reference to the interstate commerce in millwork which existed in the year 1917 immediately prior to the negotiation and execution of the new inside and outside agreements is contained in a report made to the District Council by a committee which had officially investigated the sources of supply for millwork shipped into the City of Chicago from sources outside of the State (R. 81–82).

This report is quoted verbatim:

> We have made a thorough investigation of the conditions which exist in the mills of this city. We have visited many of the plants and find some of them actually shut down and many of the others working with greatly reduced forces. Upon inquiring as to the causes which bring about this state of affairs we were everywhere given the same reason, which is, *that material can be bought and shipped into Chicago at prices much lower than are possible with the wage scale which prevails here.* With regard to fixtures, we were informed that this class of material can be bought *outside,* brought into Chicago and installed at a lower price than it would cost to manufacture only, under Chicago conditions. We also visited several very large warehouses where we found immense stocks of sash, doors, etc., all made *outside* and shipped in, and not one of our men employed in these places.
>
> *We have been particular to ascertain the cities from which most of this material*

comes and find that Oshkosh, Wisconsin, is the principal one. We also find a lot of trim coming from the South, but are of the opinion that with Oshkosh organized up to a reasonable scale of wages we would have taken a long step toward bringing the business back to our own mills. We were repeatedly told by the manufacturers that they would much prefer to manufacture the material here if it were possible to come anywhere near the prices at which they buy. We find two or three of the firms are seriously contemplating moving their factories from Chicago.

After giving the matter very careful consideration, we recommend that the District Council take the matter up with the general office and request that our national officers give this question all the attention possible *by assigning an organizer to Oshkosh, and, if possible, to some of the other cities from which we are receiving the closest competition.* (Italics ours.)

The above report was presented to the District Council and concurred in by that body. (R. 189.)

The word "outside," as used in the above report, clearly appears to refer to millwork manufactured without the State of Illinois.

From the above report it will be noted that a large part of the millwork used in the City of Chicago was nonunion and originated in States other than the State of Illinois. Further, that it was the desire of the union to prevent that nonunion

millwork from being shipped into that city. To exclude nonunion millwork would have, and was understood to have, the necessary effect of excluding millwork produced outside Illinois.

Even as early as February, 1917, this matter of excluding this particular millwork had been discussed with the manufacturers in the City of Chicago, and these manufacturers had indicated their desire to occupy that field of manufacturing and selling millwork in the City of Chicago then occupied by these foreign manufacturers. The manufacturers and contractors, of course, must have understood the interstate character of the millwork of which they were the purchasers. (Compare R 81–82 with R. 254–255, 241, 265–266, 79.)

Dealing with the negotiation of the new inside labor agreement, this record discloses the following salient and pertinent facts:

> That the contract between these parties provided for the exclusive use of union labor by the manufacturers. (R. 25.) This provision had been incorporated in former labor agreements for a number of years. (R. 263.)
>
> The manufacturers claimed that business conditions in their industry did not justify an increase of wages. (R. 246, 190, 209.) Nevertheless the inside carpenters received a substantial increase for the next three years. (R. 25, 246.) To some extent, at least, this was based upon the anticipated exclusion of nonunion millwork for sale in the City of Chicago. (R. 221.)

> The manufacturers would not conclude the agreement until the agreement between the outside carpenters and the Contractors had been consummated. (R. 84, 93, 23.) Although apparently a tentative agreement was reached between committees for the manufacturers of Division G and the inside carpenters in the latter part of March, 1918 (R. 191), yet the actual consummation and acceptance of the same by the manufacturers was not until April 19th, after the execution of the agreement between the Contractors Association and the outside carpenters (R. 24, 23, 139).

The new agreement had, however, been tentatively put into effect by the manufacturers as to wages and hours on April 1st. (R. 23–24.)

Before the agreement as to wages and hours was consummated it was understood that provision should be made whereby manufacturers and contractors having outside nonunion-made stock on hand or ordered might have the same installed by union carpenters. (R. 221, 212.)

Immediately after the signing of the several labor agreements arrangements were in fact made between the manufacturers and the District Council whereby outside nonunion material was stamped by the union officials and permitted to be used in construction in the City of Chicago. (R. 24, 30, 73–74.)

Furthermore, a committee was appointed by the manufacturing members of Division G to consider

the establishment of a bureau to check up and ascertain whether or not union labor was in good faith refusing to install nonunion-made material. (R. 36, 257.)

Only two members of Division G were nonunion. Immediately after the signing of the inside agreement one of these unionized (R. 88) and the other was told by defendant Brims that it was *now* expected to do so (R. 196–197). At that time Brims stated that if they could keep this cheap out-of-town stuff out it would help get better prices for the Chicago mills and help inside men get better wages. (R. 108.)

The outside agreements had for some years contained a clause known as Article 3, of Section 3, in form as follows (R. 193):

> There shall be no restriction upon any manufactured material, except prison-made.

It will be noted that the effect of this clause was to prevent union carpenters from refusing to install nonunion-made material.

During the course of the negotiation of the outside agreement, the outside carpenters' Arbitration Board, headed by defendant Brims, insisted that this clause, as above stated, should be changed to read in terms, " There shall be no prison-made material used " (R. 216), thus permitting the union carpenters to refuse to install nonunion-made materials.

All parties knew that such a clause meant that nonunion-made material would not be installed. (R. 269–270.)

While the respective negotiations between the manufacturers and the inside carpenters and between the Contractors' Association and the outside carpenters were in progress, there was likewise a series of negotiations carried on between the Labor Committee of Division G and a committee known as the Trade Relations Committee of the Contractors' Association, for the purpose primarily of arriving at a preferential discount to be granted to the members of the Contractors' Association in the purchase of mill work from the manufacturing members of Division G. (R. 54–55, 217–218, 249.)

Previous to the consummation of both the inside and outside agreements, the Labor Committee of Division G, authoritatively acting on behalf of the membership of Division G, agreed with the committee from the Contractors' Association that they would recommend the grant by the membership of Division G, of a preferential discount to the members of the Contractors' Association if the Contractors' Association would consent to the change in Section 3 of Article 3 demanded by the Arbitration Board of the outside carpenters. (R. 37, 107, 168, 172, 217, 249.)

The evidence is that the granting of this preferential discount was predicated upon an anticipated exclusion of nonunion material from the

Chicago market and increased business by the manufacturers. (R. 209, 211, 212.)

Immediately thereafter the Arbitration Board of the Contractors' Association did agree with the Arbitration Board of the outside carpenters to modify Section 3 of Article 3 in terms as follows (R. 72):

> There shall be no restrictions against the use of any manufactured material, except nonunion and prison-made. This shall not apply to machine-made floor, ceiling, or ceiling partitions, planed lumber or timber, or hardware of any kind.

This change permitted the outside union carpenters to refuse to work upon nonunion material, which was at once done, with the immediate effect of preventing the installation of the nonunion material shipped in interstate trade and commerce into the City of Chicago.

The manufacturers well knew the purpose and effect of the adoption of this form for Article 3. (R. 269–270.)

Defendant Rinn, of the Labor Committee of Division G, testified that he had knowledge as early as January, 1918, that the outside carpenters would make this demand, and knew the past positive refusal of the contractors to accept such condition. (R. 241.) In fact, the subject of Article 3 was discussed in Division G during March, 1918. (R. 161.)

Rinn then stated (R. 249) that it was only in a casual fashion during the negotiations between the committee from the Contractors' Association and the Labor Committee of Division G as to a preferential discount to be granted the members of the Contractors' Association that he asked defendant Doyle about the negotiations between the Contractors' Association and the outside carpenters. He claimed it was only after Doyle told him that the contractors had refused to consider the modification demanded by the outside carpenters that he became "excited" to the point of offering a preferred discount of 15% to the members of the Contractors' Association to induce them to yield to the demands of the outside carpenters. (R. 249.)

The members of Division G were afterward fully advised as to this action by the Labor Committee. (R. 256.)

The preferential discount promised by Rinn and the other members of the Labor Committee of Division G to the Trade Relations Committee of the Contractors' Association was not in terms granted by Division G until May, 1919, although the subject of various negotiations meanwhile. (R. 40–42, 169.)

It is most significant that this agreement as to a preferential discount expired by express limitation May 31, 1921, the exact date of the expiration of the outside agreement. (R. 41.)

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This preferential discount when granted, only under advice of counsel and not as a matter of original intent, was made in terms to apply to all contractors in the City of Chicago. (R. 37, 51, 70, 248.)

Adverting to the negotiation and consummation of the outside labor agreement, the following salient facts appear:

> That early in the year 1918, at the first meeting of the arbitration boards of the Contractors' Association and the outside carpenters, the contractors stated to the union labor representatives that their labor agreement with the outside carpenters was dependent upon the adjustment of certain disputes with the manufacturing membership of Division G. (R. 71.) Defendant Doyle testified that one of the disputes referred to was the adjustment of the above-described discount. (R. 54, 221–222.) It is denied on the part of the labor union in the testimony of defendant Brims that the union had any knowledge as to what disputes were referred to by the contractors' representatives. (R. 193.) The correctness of this statement as to ignorance on the part of the labor representatives must be judged upon all the surrounding circumstances.
>
> The outside carpenters demanded from the contractors a wage increase from 70¢ to 87½¢ per hour. The contractors offered to pay 85¢ per hour, if the carpenters would let Section 3 of Article 3 stand as it had been

in the past. This was refused, and in the end it was agreed that the carpenters should receive 80¢ per hour and Section 3 of Article 3 should be changed so as to authorize refusal to install nonunion-made material. (R. 56, 87, 194.)

Previous to the offer of the preferential discount by the Labor Committee of Division G, the Contractors' Association, by vote of its membership, had steadily refused to accede to the modification of Article 3 demanded by the union. (R. 194, 55, 56, 74.) However, immediately after the tender of the preferential discount, the modification was accepted in substance by the Contractors' Association. (R. 72, 81.)

The effect upon the former interstate commerce flowing into the State of Illinois of this refusal on the part of the outside carpenters to install nonunion-made material was found by the Circuit Court of Appeals to be decisive (R. 352), particularly in that the commerce from the Wisconsin mills was greatly reduced.

The prices charged by foreign nonunion manufacturers for the millwork here in question had been substantially lower than those charged by the Chicago or other union manufacturers of the same. (R. 80, 82, 128, 130, 135.)

But the evidence is that after this series of negotiations and agreements had taken place no member of the Contractors' Association, repre-

senting as it did five hundred of such contractors in the City of Chicago, could purchase and use that nonunion material which they had formerly purchased from nonunion sources without the State of Illinois, and to that end a most substantial degree of that commerce was restrained. (R. 79–80.)

Some of the manufacturing concerns in Chicago, who were members of Division G, immediately thereafter increased their manufacturing capacity, particularly those manufacturers whose representatives in the membership of Division G were members of the Labor Committee who had negotiated the agreement with the inside carpenters and who tendered the preferential discount to the Arbitration Board of the Contractors' Association. (R. 162, 211, 219–220, 234.)

By reason of the agreement of the manufacturers to employ exclusively union inside carpenters all additional carpenters whose services were made necessary as a result of this increased capacity were union members.

SPECIFICATION OF ERRORS TO BE URGED

1. The court below erred in holding that there was no evidence in this record which would support a finding by the jury that the agreement embodied in Article 3, Section 3, was not the ultimate agreement of the parties.

2. The court below erred in failing to hold that the evidence proved a common purpose and under-

standing on the part of these defendants to prevent and interfere with interstate commerce in millwork from outside the State of Illinois to the City of Chicago.

3. The court below erred in failing to hold that this common purpose and understanding on the part of these defendants, together with the use by agreement of effective means to execute the same, constituted a direct restraint on interstate commerce in said millwork, fully supporting the indictment.

SUMMARY OF ARGUMENT

1. The agreement embodied in Article 3, Section 3, as adopted in the contract between the outside carpenters and the Contractors' Association in April, 1918, was not the ultimate agreement of these defendants, but was merely one of the agreements to effectuate the real underlying understanding and intention to prevent nonunion millwork from being shipped from outside the State of Illinois to the City of Chicago.

2. The evidence in this case clearly proved a common purpose and understanding on the part of these defendants to prevent and interfere with interstate commerce in said millwork.

3. This common purpose and understanding to exclude carried out in agreement by means local in character constituted a direct restraint on interstate commerce, fully supporting the indictment.

ARGUMENT

I

THE AGREEMENT EMBODIED IN ARTICLE 3, SECTION 3, AS ADOPTED IN THE CONTRACT BETWEEN THE OUTSIDE CARPENTERS AND THE CONTRACTORS' ASSOCIATION IN APRIL, 1918, WAS NOT THE ULTIMATE AGREEMENT OF THESE DEFENDANTS, BUT WAS MERELY ONE OF THE AGREEMENTS TO EFFECTUATE THE REAL UNDERLYING UNDERSTANDING TO PREVENT NON-UNION MILLWORK FROM BEING SHIPPED FROM OUTSIDE THE STATE OF ILLINOIS TO THE CITY OF CHICAGO AND SOLD AND INSTALLED THEREIN.

Mr. Justice Day, in the decision of *Eastern States Retail Lumber Dealers' Association* v. *United States,* 234 U. S. 600, 612, reiterated a long established doctrine of criminal law as to proof of conspiracies in the following language:

> But it is said that in order to show a combination or conspiracy within the Sherman Act some agreement must be shown under which the concerted action is taken. It is elementary, however, that conspiracies are seldom capable of proof by direct testimony and may be inferred from the things actually done, and when in this case by concerted action the names of wholesalers who were reported as having made sales to consumers were periodically reported to the other members of the associations *the conspiracy to accomplish that which was the natural consequence of such action may be readily inferred.* (Italics ours.)

This language is applicable and pertinent to consideration of the facts here involved.

Article 3, Section 3, of the contract between the outside carpenters and the Contractors' Association, as drafted into the new outside agreement in April, 1918, and referred to by the Circuit Court of Appeals, was in terms as follows (R. 72):

> There shall be no restrictions against the use of any manufactured material, except nonunion and prison-made. This shall not apply to machine-made floor, ceiling, or ceiling partions, planed lumber or timber, or hardware of any kind.

It will be noted that this phraseology *implies* an anticipated restriction against nonunion material.

Article 3, as contained in the preceding contract between those parties, was in terms, "There shall be no restriction upon any manufactured material, except prison-made." (R. 193.)

It will be noted that in express terms this phraseology *prevented* the outside carpenters from refusing to install union-made material.

It is evident that as Article 3 was drafted into their agreement the parties expected and proposed, and in substance agreed, that the outside carpenters would not install nonunion-made material. The Labor Committee of Division G of the Manufacturers' Association solicited and offered to subsidize the Contractors' Association to have them agree with the outside carpenters in terms as demanded by them. (R. 249, 217.)

The evidence is that the subsidy, to be paid in the form of a preferential discount by the manufacturers to the contractors upon their purchases, was predicated upon the anticipated exclusion of nonunion material substantially from foreign sources, and the increased business and profit to result to the manufacturing members of Division G thereby. (R. 81–82, 209, 211, 212–213.)

The Union defendants, through the testimony of defendant William F. Brims, protest ignorance of all matters established by this record in relation to the transactions between the Labor Committee of the manufacturers and the Trades Relation Committee of the Contractors' Association, with reference to this subsidizing of the contractors. (R. 193.)

This declaration of a lack of knowledge and participation must be considered in the light of all the surrounding facts and circumstances.

At the first meeting of the Arbitration Board, made up of committees from the outside carpenters Union and the Contractors' Association, at which defendant William F. Brims dominated on the part of the Unions, the Contractors' Committee advised that there were certain pending disputes with the manufacturers upon which their contract with the outside Union was dependent. (R. 71.) Defendant Brims testified that no questions were asked as to these disputes and no knowledge obtained.

This statement, judged in the light of the existing conditions and circumstances, is not convincing.

At that time when the Union was seeking to have a radical change made in the agreement of a character most important to the Union, no reasons appeared on the surface why that agreement should be dependent on any disputes existing between the manufacturers and the contractors.

The only dispute which could practically affect the agreement between the Union and the contractors would be one involving better prices or terms to be received by the contractors from the manufacturers whereby their profits and business would be increased and their ability to grant concessions as to wages and other matters would likewise be greatly increased.

The natural and normal action to be taken by the Arbitration Committee of the outside carpenters under these conditions would be to state that it could not be seen how their agreement could be affected by any such disputes, and request information as to the nature of such disputes. But no such action was taken on the part of the outside carpenters' committee. The natural inference to be drawn is that from some source, if not from the contractors, knowledge had been obtained as to the things pending between the manufacturers and contractors that would have a bearing upon their negotiations with the outside carpenters.

The record further shows that the union had actual knowledge that the negotiations with reference to the outside agreement and the inside agreement were in some manner interdependent, inasmuch as the Secretary and Treasurer of the Union had advised the General Secretary of the Brotherhood on January 23, 1918, that he was informed that the manufacturers would not enter into negotiations with the inside carpenters until after the agreement with the outside carpenters had been signed. (R. 84.)

Subsequently, the preferential discount was promised to the contractors' committee if the Contractors' Association would agree with the outside carpenters to such a form of Article 3, Section 3, as would authorize the outside carpenters to refuse to install nonunion-made material. (R. 249, 250, 107, 110, 168, 172, 216–218.) Immediately after the tender of this subsidy by the Labor Committee of the manufacturers the Contractors' Association did agree to a form of Article 3, which in substance gave the right desired to the outside carpenters. (R. 72, 81.)

Defendant Brims also denies knowledge of this transaction, and again the statement must be judged in the light of all the surrounding conditions. The whole history of these negotiations discloses a most intimate relation between the acts of the union and the acts of Division G.

From some source defendant Rinn, the leading spirit in the Labor Committee of Division G, was

advised as early as January, 1918, of the purpose of the Union to refuse to install nonunion made material. (R. 241.)

When thereafter the Labor Committee of Division G dealt with the Arbitration Board of the inside carpenters, headed by defendant Brims, the atmosphere of conciliation (R. 190–191) was totally different from that existing in the meetings between the Arbitration Board of the union, headed by defendant Brims, and the Contractors' Arbitration Committee, when threats, considered to be threats of strike, were used (R. 194, 226.)

Although the state of the business of the manufacturers, as disclosed by this record and as claimed by them, was unsatisfactory, the inside carpenters received substantial increases in wages, and other concessions in the way of shorter hours and double pay. (R. 25, 246.) These were apparently based upon the adoption of Article 3 as demanded by the union. (R. 221.)

It further appears that although the committees from the inside carpenters and Division G reached these conclusions, subject to the ratification of their respective organizations, the latter part of March, yet as a matter of fact the members of Division G did not consummate the agreement until April 18th, subsequent to the consummation of the agreement between the contractors and the outside carpenters on April 10th. (R. 190, 191, 23, 24.) The record shows that the agreement was tentatively put into effect by the members of Division G employing the

inside carpenters, but was not actually and bindingly executed until after the contractors' agreement with the outside carpenters was consummated. (R. 139.) Defendant Brims, on behalf of the union, also denies both knowledge of the delay in adopting the agreement by the members of Division G and the reason for such delay. This is in the face of the statement, by the Secretary and Treasurer of the District Council to the General Secretary of the Brotherhood, that the manufacturers would not consummate an agreement prior to the consummation of the outside agreement.

Pending the consummation of the inside agreement granting the substantial wage increases, which defendant Doyle testifies were founded upon an expected increase in the business of the manufacturers by reason of the change in Article 3 (R. 221), this same Labor Committee of Division G, which was dealing with the inside carpenters, induced and subsidized the Contractors' Committee to agree to the union demands as to Article 3 in substance, as defendant Rinn testifies, for the alleged purpose of preventing a strike by the outside carpenters (R. 249).

A most significant fact in this connection is that the records of Division G show (R. 36) that previous to May 13, 1918, Division G had appointed a special committee to formulate a plan to check up material delivered for building in Chicago. It is clear that this purpose on the part of the members of Division G had no relation to the preven-

tion of any strike by the outside carpenters. Its purpose was to provide a means of knowing whether the outside carpenters' union was in good faith complying with an agreement not to install, and thereby to exclude, nonunion material. This circumstance goes far to nullify any contention on the part of the manufacturers that their one interest in subsidizing the contractors was to prevent a strike.

In connection with the refusal to install nonunion-made material, it was understood before the outside agreement was signed that all parties would have an opportunity to make use of outside nonunion material which was on hand or ordered. (R. 212, 221.) Immediately after the actual signing of the contract on April 18, 1918, between Division G and the inside carpenters, arrangements were made with the union whereby the stocks on hand of outside nonunion material could continue to be sold and installed in the City of Chicago. (R. 24, 30, 73.)

It is inconceivable that the Labor Committee of Division G would have not only allowed, but induced the refusal to install nonunion-made material at a time when large stocks of goods of that character were being carried by its members, unless such an understanding had been previously arrived at with the union.

It is further inconceivable that, during all these negotiations between the Labor Committee of Division G and the inside carpenters, headed by

Brims, and the Arbitration Committee of the Contractors' Association and the outside carpenters, headed by Brims, and the Labor Committee of Division G and the committee of the Contractors' Association with reference to the subsidizing of the Contractors' Association to induce it to agree to the demands of the outside carpenters, where so many common interests were involved and so many immediate points of contact were present, that those in charge of the several negotiations should not communicate each to the other the substance of the current transactions toward the common end sought.

The true understanding of the Labor Committee of Division G and the inside carpenters, headed by Brims, is further indicated in an interview between Brims and Anderson (R. 196–197), one of the two manufacturing members of Division G who were not unionized. This took place immediately after the consummation of the contract between Division G and the inside carpenters. Defendant Brims then told Anderson that he was *now* expected to organize his business as a union concern, in conformity with that agreement; and that if cheap out-of-town stuff could be kept out, it would result in better prices to the Chicago mills and better wages to inside carpenters. (R. 108.)

For many years agreements had been entered into between Division G and the inside carpenters providing for the exclusive use of union carpenters.

In this particular the new agreement did not vary from the old, and yet Brims tells Anderson that inasmuch as he is a member of the Association he is expected to unionize *now* in conformity with the agreement.

So far as can be seen in the phraseology of the two contracts, Brims had no more right to expect the unionization of Anderson's business at that time than at any other preceding time when a contract was entered into. The attitude of Brims and the language used point to but one conclusion, and that is that the understanding between the Labor Committee of Division G and the inside carpenters, headed by Brims, was that all the members of Division G were to receive a *quid pro quo* from the union.

Naturally the written contract between Division G and the inside carpenters contained no reference to the noninstallation of nonunion material by the outside carpenters. The outside carpenters were not employees of the manufacturers.

The union and its representatives knew the effect of the refusal to install nonunion material upon a specific interstate commerce, to wit, that commerce from the State of Wisconsin and from the Southern States. The manufacturers were also substantially advised as to the effect of the proposed agreement as to the noninstallation.

Yet one is asked to believe that in this series of agreements with the anticipated profit to accrue to

the manufacturers by reason of the exclusion of nonunion-made material then flowing to the City of Chicago and the increase in their business, the benefit to accrue to the contractors by reason of the promised subsidy from the manufacturers, the procurement of higher wages both by the inside carpenters and the outside carpenters, and in the exclusion of nonunion material, whereby the inside carpenters were supposed to benefit through additional employment by the increased business of the manufacturers, that there was no further understanding between all these parties than that outside carpenters would have the right to refuse to install nonunion-made material.

Referring to the doctrine announced by Mr. Justice Day, quoted in the beginning of this section of this brief, it is evident that such a conclusion must disregard the natural inferences deducible from these facts and the inevitable, well-known, and intended results of the acts which were done by these defendants.

The very basis of the successful conclusion of this venture was the exclusion of that millwork from outside the state of Illinois manufactured in nonunion mills where conditions enabled lower prices to be charged when the material was sold on the Chicago markets.

The very agreement to exclude nonunion material was based upon the anticipated profits to accrue directly to the manufacturers and indirectly to the carpenters and contractors, from the necessary

effect of excluding the products of Wisconsin and the South.

II

THE EVIDENCE IN THIS CASE CLEARLY PROVED A COMMON PURPOSE AND UNDERSTANDING ON THE PART OF THESE DEFENDANTS TO PREVENT AND INTERFERE WITH INTERSTATE COMMERCE IN SAID MILLWORK

In certain classes of cases, including Sherman Act prosecutions, purposely doing the act or creating the condition, inhibited by law, raises an irrebutable presumption of intent. *Armour and Company* v. *United States*, 209 U. S. 56, 85; *United States* v. *Joint Traffic Association*, 171 U. S. 505.

In *United States* v. *Reading Company*, 226 U. S. 324, a proceeding under the Sherman Act, this Court held (p. 370):

> Of course, if the necessary result is materially to restrain trade between the States, the intent with which the thing was done is of no consequence.

These doctrines find application to the facts shown by this record.

However, on this record one is not constrained to rely upon the doctrine of imputed or constructive intent to establish the guilty intent on the part of these defendants. Their intent is clearly established by positive evidence.

Reference to the report of the Committee of the District Council (*ante*, p. 8) discloses the intent and purpose on the part of the Chicago unions to inter-

fere with and prevent the shipment of nonunion-made millwork from without the State, particularly from the State of Wisconsin and certain Southern States.

With all due deference, it is submitted that the court below misconceived the prime intent of these union defendants when it stated (R. 352):

> It appeared from the evidence that prior to 1918 a large amount of material was shipped into the city of Chicago for use therein, from Oshkosh, Wisconsin, the millwork industry being well developed in that city, and the labor therein employed being nonunion. *It was evidently the hope of the union organizations to force the unionizing of these nonunion shops through a modification in the agreement.* (Italics ours.)

Examination of the report above referred to, which was concurred in by the full District Council (R. 189), shows that it was not the prime purpose of the union defendants to bring about the unionization of Wisconsin and Southern mills, but that the prime purpose, as originally indicated in this report, was to unionize these mills *for the purpose of preventing their products from being shipped to Chicago and sold in competition, at lower prices, with the Chicago manufacturers who were the employers of the Chicago inside unions.*

The subsequent agreements not to install nonunion-made material were most effective to carry out this declared purpose of stopping the shipments from Wisconsin and other States.

Evidence of the true purpose and intent of the manufacturers may be found in the existence of numerous circumstances.

The manufacturers proposed to establish a bureau to check the installation of millwork in Chicago so as to ascertain whether or not nonunion-made millwork was being installed. (R. 36.)

The contractor Doyle testified that the manufacturers claimed business was too bad to grant the contractors a preferential discount " and by getting this article 3 released they might be able to negotiate the discount on those mills." (R. 209.) And further " when they (the manufacturers) said that because of Article 3 they had been benefited and might be able to pay a discount; they claimed that business would be better." (R. 211.) And " when the millmen spoke of getting Article 3 released I understood that they wished to stimulate their own business." (R. 212.)

As to the community of intent of manufacturers and the union, the report to the District Council discloses that that committee discussed with the manufacturers the question of the exclusion of the millwork from Wisconsin and the Southern States, and were assured by the manufacturers of their desire to acquire that business. (R. 82.)

Before the labor agreements were consummated, the understanding was that such nonunion made outside material as might be on hand with the manufacturers and contractors, or ordered by them,

should be installed by the union outside carpenters. (R. 212, 221.)

On April 19, 1918, the day after the inside agreement was fully consummated, Division G held a meeting, and its labor committee, which had carried on the series of negotiations with the union and with the contractors, made its report as to the contract with the carpenters' union, which report was approved by Division G. At once the question of the installation of the outside material was taken up. The labor committee was directed to send out a letter to the members of Division G, "explaining how they should report orders for millwork purchased from the *outside*," also how they should report stocks on hand. (R. 24.)

This meeting was followed by arrangements with the union whereby all material bought previous to *May 1, 1918*, should be stamped and installed by the union. (R. 30, 73.)

This record establishes the common intent and purpose of all these defendants that outside millwork should and would be excluded.

III

THIS COMMON PURPOSE AND UNDERSTANDING TO EXCLUDE CARRIED OUT IN AGREEMENT BY MEANS LOCAL IN CHARACTER CONSTITUTED A DIRECT RESTRAINT ON INTERSTATE COMMERCE, FULLY SUPPORTING THE ALLEGATIONS OF THE INDICTMENT.

It is believed that in Section 1 of this brief it is established that the real and underlying understanding of all these defendants was to prevent and

interfere with the interstate trade and commerce in millwork flowing to the City of Chicago, particularly from the State of Wisconsin and from Southern States.

An agreement of this character violates the provisions of the Antitrust Act by reason of the direct and necessary restraint of trade contemplated by the parties.

Assuming, however, that the proven agreement was only to prevent the installation of nonunion-made millwork—assuming for the purpose of the argument that this was the ultimate understanding of the parties—such agreement to use means local in character would still be illegal when taken together with the common intent and purpose of all parties to restrain interstate commerce by excluding millwork manufactured in States other than Illinois.

There can be no substantial doubt on the evidence in this record but that there was at least a common understanding between all these defendants that the outside carpenters would not install nonunion-made millwork.

As to the union, this conclusion is established by their express written agreement with the contractors and the circumstances surrounding its negotiation. As to the manufacturers, this conclusion is established by reason of their agreement with the contractors as to the preferential discount and the circumstances surrounding its negotiation.

As to the union and the manufacturers taken together, this conclusion is largely established by reason of the intimate relations of all these contracting parties, the fact that it was understood previous to the consummation of either one of the labor agreements that the large stocks of nonunion-made foreign material in the warehouses of, and ordered by the manufacturers, would be permitted to be installed, and by the further fact that the manufacturers immediately after the initiation of this restriction undertook to establish a bureau for the purpose of checking up the installation of millwork by the union so as to ascertain whether or not the restriction was carried out in good faith.

Behind this understanding as to the outside carpenters ceasing to install nonunion-made material lurked that common intent and purpose, which it is believed has been demonstrated in the preceding section of this brief, on the part of all these defendants that such noninstallation should interfere with, diminish, and prevent the shipment of millwork from outside states, and its sale in the City of Chicago.

It is the contention of the Government that this common intent and purpose, when carried out in an agreement by the use of means effective to achieve the illegal restraint, constitutes a direct restraint upon the interstate trade and commerce involved.

Nor is this conclusion affected by reason of the fact that the means chosen were local in their operation.

In *Loewe* v. *Lawlor*, 208 U. S. 274, defendants desired to unionize the manufacturing plant of Loewe Brothers in Danbury, Conn. In order to do so they ordered a strike in the plant at Danbury. Further, in order to reach the desired result, defendants threatened to and did withdraw patronage from persons throughout the United States who bought hats manufactured in this plant. The strike in Connecticut was entirely within that State. The purpose of the strike and the boycotts was to interfere with the business of this factory, a large part of which was interstate. This Court passed upon this case twice and both times held that the facts constituted a violation of the Anti-trust Law. This Court said (p. 301):

> If the purposes of the combination were, as alleged, to prevent any interstate transportation at all, the fact that the means operated at one end before physical transportation commenced and at the other end after the physical transportation ended was immaterial.

In the cited case it will be noted that in the effort to interfere with the interstate commerce from Danbury, Connecticut, the defendants sought to institute boycotts against the products of that factory in other states at the time of their ultimate sale in local commerce.

In the case at bar these defendants have prevented the installation of the millwork here involved for the purpose of interfering with inter-

state commerce from outside States into the City of Chicago, so that all three factors, the manufacturers, the contractors, and the union carpenters, should profit out of the commerce to be carried on by the Chicago manufacturers in place of that commerce which previously flowed from the outside states.

It is evident that the mere fact of the local operation of the effective means chosen does not affect the illegality of the combination.

The defendants expected the Chicago manufacturers to largely monopolize that field of manufacture and sale of millwork formerly carried on by the nonunion manufacturers of other States. The report to the District Council discloses this expectation and intent on the part of the union. The contractors had the same intent or expectation, because they expected to profit by the preferential discount predicated upon the exclusion and monopoly. The manufacturers expected and intended to largely monopolize this field of commerce, as shown by their granting increased wages to the inside carpenters and the preferential discount to the contractors and their declarations at that time.

This Court said in *Coronado Coal Company* v. *United Mine Workers of America*, 268 U. S. 295, 310:

> The mere reduction in the supply of an article to be shipped in interstate commerce by the illegal or tortious prevention of its

> manufacture or production is ordinarily an indirect and remote obstruction to that commerce. But when the intent of those unlawfully preventing the manufacture or production is shown *to be to restrain or control the supply entering and moving in interstate commerce,* or the price of it in interstate markets, their action is a direct violation of the Antitrust Act. *United Mine Workers* v. *Coronado Co.,* 259 U. S. 344, 408, 409; *United Leather Workers* v. *Herkert,* 265 U. S. 457, 471; *Industrial Association* v. *United States* [268 U. S. 64, decided April 13, 1925]. (Italics ours.)

In the case at bar it is evident that the proven intent of these defendants to restrain and control the supply of nonunion material being shipped from outside States to the City of Chicago falls within the doctrine announced. The difference is that in the cited case the restriction operated at the inception of that commerce, while in the case at bar the restriction operates at the ultimate of this commerce.

In this same case this Court further said (p. 310):

> We think there was substantial evidence at the second trial in this case tending to show that the purpose of the destruction of the mines was to stop the production of nonunion coal and *prevent its shipment to markets of other States than Arkansas, where it would by competition tend to reduce the price of the commodity and affect in-*

> *juriously the maintenance of wages for union labor in competing mines,* and that the direction by the District Judge to return a verdict for the defendants other than the International Union was erroneous. (Italics ours.)

It is clearly apparent from the evidence in this record that it was one of the purposes of these defendants, by rendering it impossible to install nonunion millwork from without the State, to prevent its shipment to and sale in Chicago at lower prices than the Chicago manufacturers, using union labor, were either willing or able to sell at.

In *United Leather Workers* v. *Herkert & Meisel Trunk Company,* 265 U. S. 457, 471, after reviewing the pertinent cases, this Court said:

> This review of the cases makes it clear that the mere reduction in the supply of an article to be shipped in interstate commerce, by the illegal or tortious prevention of its manufacture, is ordinarily an indirect and remote obstruction to that commerce. It is only when the intent or *necessary effect upon such commerce in the article is to enable those preventing the manufacture to monopolize the supply, control its price or discriminate as between its would-be purchasers,* that the unlawful interference with its manufacture can be said directly to burden interstate commerce. (Italics ours.)

It clearly appears in the evidence in this record, as hereinbefore discussed, that it was not only the intent of these defendants that their interference

with the installation of nonunion-made foreign material should control this product shipped in interstate trade and commerce, and should likewise result in the substantial monopolization of that commerce by the defendant manufacturers, but that the *necessary* effect of the acts done was a diminution of the interstate trade and commerce in millwork to the City of Chicago, and to a substantial extent its monopolization by the manufacturer defendants.

There was ample evidence in this record from which the jury could find that the substance of the offense charged, as construed by the trial court (R. 286), was proven. There is no variance between allegations and proof.

In *United States* v. *Howard*, 26 Fed. Cases, page 389, No. 15403, Mr. Justice Story states the doctrine as to what does not constitute a material variance between allegations and proof in an indictment in the following language:

> In regard to the other question, what is sufficient proof of allegation, which can not be disregarded as evidence, or, in other words, what constitutes a material variance in proof from the charge in the indictment, the general rule is that a variance between the indictment and the evidence is not material, provided the *substance of the matter* be found. Hence it is, that even in capital offenses it is not necessary to prove more than the substance of the averment in the indictment. (Italics ours.)

For the foregoing reasons it is respectfully submitted that the judgment of the Circuit Court of Appeals should be reversed.

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SEPTEMBER, 1926.

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In the Supreme Court of the United States

OCTOBER TERM, 1926

No. 212

UNITED STATES OF AMERICA, PETITIONER

v.

WILLIAM F. BRIMS, STANLEY MUSZALSKI, B. J. G. Wittman, et al.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY BRIEF FOR THE UNITED STATES TO BRIEF FOR MILLMEN DEFENDANTS

[The numbering of points herein will correspond to the numbering in the brief for millmen (manufacturing) defendants, hereinafter referred to as M. B.]

I

CONCERNING CERTAIN MISLEADING STATEMENTS OF FACT IN MANUFACTURERS' BRIEF

1. It is stated (M. B. 23) that the agreement between Millmen and their employees had been "fully consummated, ratified by the district council, and accepted by the locals *prior to the time* the

contractors' association had agreed to any change in Article 3."

The record shows, however, that although the representative committees of the manufacturers and inside carpenters had agreed upon the terms of a new contract, this was subject to approval by *both* organizations before the consummation (R. 191); that the secretary of Division G, under date of March 22, 1918, addressed a letter (R. 23) to its members:

> This is to advise you that the contract with your inside hands is now under negotiation, but will not be consummated until the *signing* of the agreement of the Carpenter Contractors' Association with the outside carpenters. Their agreement expires May 31, 1918. There will be no cessation of work pending the execution of this agreement. Therefore, do not be disturbed if the agreement with our union is not signed by April 1st. By order of the labor committee. Yours truly, E. E. Hooper, secretary. (Italics ours.)

2. It is stated (M. B. 25) that the inside contract was not signed by the committee of the Millmen until April 18, and "the reason for the delay does not appear."

Reference to the letter of March 22d from the Secretary of Division G to its members, above quoted, clearly discloses that the reason for this delay was the dependence of the final execution of the inside

contract upon the final execution of the outside contract.

The evidence above quoted and referred to further discloses that in the above letter the secretary advised the members of Division G that although their contract might not be signed by April 1, when their old contract expired, they need fear no cessation of work. This secretary could not have given such assurance unless there had been a previous understanding with the labor leaders.

3. It is stated (M. B. 27) that all the members of Division G, at a meeting of that body on May 13, 1918, were opposed to allowing the discount to members of the contractors' association *only,* as recommended by their committee.

However, examination of the minutes of the meeting of May 21st (R. 36–37) discloses that the opposition of the members of Division G was limited to the amount of the proposed subsidy *only,* but not to the exclusive grant of the same to the members of the contractors' association. The labor committee of Division G was in fact authorized to offer a discount of 5% to members of the contractors' association—

> Estimates given to all other parties to be the regular estimated price.

I. 1

CONCERNING CONTENTIONS OF DEFENDANTS THAT THE CONCLUSIONS OF THE COURT OF APPEALS ON VARIANCE WERE CORRECT

Manufacturers' brief (M. B. 34) contends that there is a variance between the proof produced here and the allegations in the indictment as to (*a*) scope, (*b*) means, (*c*) parties.

(a) Scope of the Conspiracy

Defendants assume that the indictment alleges a conspiracy to exclude *all* foreign-made material (M. B. 43), and then point out that the proof establishes merely the exclusion of a part of such foreign-made material.

The indictment, however, does not charge a conspiracy to exclude *all* foreign-made material, but, on the contrary, a conspiracy to exclude foreign-made material. If the indictment did charge a conspiracy to exclude all, it would, notwithstanding, not be a variance to prove the exclusion of some, or a part of the foreign-made material. (*Boyle* v. *United States,* 259 Fed. 803, 808.)

And the Circuit Court of Appeals itself did not base its decision upon this alleged ground of variance, but rather upon the ground that the Government in proving an agreement not to install non-union-made material had failed to prove an agreement to exclude material in interstate commerce.

The Government's answer to this point is that the necessary and intended effect of the agreement not to install nonunion goods was under the circumstances of this case to exclude material in interstate commerce. In its main brief the Government has referred to the evidence showing that both groups of defendants understood that the competitive material flowing into the state of Illinois was in fact nonunion made. It was this low-priced material which both groups of defendants sought by agreement to exclude, and the means of exclusion was to be an agreement not to install it.

(*b*) *Means of Carrying out the Conspiracy*

Counsel for defendants have misconstrued the incidental allegation in the indictment setting out the inducement offered by the manufacturing defendants to the union defendants as the allegation of means. (M. B. 45.) The means by which the conspiracy to exclude competitive material in interstate commerce was to be carried out was the noninstallation of nonunion material.

(*c*) *Parties to the Conspiracy*

The brief on behalf of the manufacturing defendants assumes that only an agreement between the Trades Relations Committee of the contractors and the Labor Committee of the millmen was proven. (M. B. 47.) This assumption excludes the wealth of circumstantial evidence to link the various members of all three groups in a common understand-

ing, as set forth in the Government's main brief, and as recognized by the opinion in the Circuit Court of Appeals, which found " an agreement between defendants whereby union defendants were not to work upon nonunion-made millwork. (R. 352.)

I. 2

CONCERNING THE ARGUMENT THAT THE GOVERNMENT'S ASSUMPTIONS OF FACT CAN NOT BE SUSTAINED BY THE RECORD

As the Government's position has been fully set forth in the opening brief, we will refer here to only a few of the principal objections made in M. B. 58–71.

5. *The secretary of the union wrote the general secretary January 23, 1918, he was informed the manufacturers would not negotiate the new contract until after the agreement with the outside carpenters had been signed.* (M. B. 60.)

Reference to the letters from the secretary of Division G to the manufacturing members (R. 23–24) confirms the correctness of the union secretary's understanding above set forth.

12. *The agreement between the millmen and carpenters was not consummated until after the agreement between the contractors and outside carpenters.* (M. B. 65.)

At R. 139 (folio 189) appears the stipulation between counsel "that the millmen's agreement was signed on April 18th and the carpenter-contractors' was signed on April 10th."

7. *Immediately after the tender of the subsidy the contractors agreed to the change in Article 3.* (M. B. 61.)

For many years the Contractors' Association had resolutely refused to enter into an agreement permitting the noninstallation of nonunion-made material. Neither threats of strike nor actual strikes had changed the contractors' position, and in the year in question the contractors had already voted down the proposed change. It is true that the actual yielding of the contractors to the demands of the union and to the solicitation of the Labor Committee of Division G happened some weeks after that tender of the preferential discount, and that one more time after that tender the contractors refused to adopt the change. But this period of a few weeks constitutes a relatively short period of time in comparison with the preceding years of resistance and months of negotiation with the outside carpenters. And the fact that the contractors once more refused the change after the tender is but further evidence of the stubborn character of their resistance. The case properly went to the jury upon the evidence that that resistance was in fact overcome by the promise of the manufacturers to provide a preferential discount.

11. *The concessions from the millmen to the carpenters were based upon the adoption of Article 3.* (M. B. 64.)

Defendant Doyle's testimony that the adoption of Article 3 "was the foundation of a aise in wages

of their (the manufacturers') employees," is entitled to the weight which attaches to the testimony of a witness who represented, both in the negotiations and at the trial, all of the contractors and who had intimate knowledge of the existing commercial and labor conditions. He had for years been intimately associated with the labor unions, and in addition knew the business conditions then existing in the city of Chicago in the manufacture and sale of millwork. He knew the representations which had been made by the manufacturers in the tender of the preferential discount and in the subsequent negotiations looking to the consummation of that tender.

And as pointed out above, the tentative agreement made by the Labor Committee of the manufacturers with the inside carpenters was not consummated by the manufacturers until after the adoption of Article 3 in its new form. (R. 23–24.)

The defendants finally argued that the action by the Labor Committee of the millmen in urging the change in Article 3 was motivated exclusively by fear of a strike. The jury was amply justified in disbelieving this theory in the light of the evidence as to the meeting of Division G at which the Labor Committee disclosed their part in securing Article 3. (R. 253–254.) None of the other members of Division G expressed any thanks to their Labor Committee for having avoided the effects of a most disastrous strike. If the peril of a strike was so great, why was it not apparent to the great majority of

Division G members who were as familiar with business and industrial conditions as was their Labor Committee?

14. *Division G appointed a committee to check material delivered for buildings in Chicago.* (M. B. 66.)

The manufacturers' brief criticizes the assumption that there existed an agreement not to install nonunion-made material. This assumption was found to be correct by the Circuit Court of Appeals (R. 353) and is supported by the testimony of Rinn himself, who testified on behalf of all the manufacturers and stated that it was well known that a refusal to install would follow the adoption of Article 3. (R. 269–270.) Attention is here called to the further concession, at M. B. 68, that the effect of the refusal to install nonunion-made material upon commerce from Wisconsin and the Southern States was well known.

The jury were at least as entitled to adopt the Government's view of this situation as to adopt the fantastic theory at M. B. 66 that the manufacturers adopted the check-up so that they might return to their old method of purchasing nonunion-made material if the check-up should disclose a failure on the part of the unions to refuse to install.

16. *Brims told Anderson he was expected to organize his business as a union concern.* (M. B. 67.)

The manufacturers' brief suggests that Brims's reason was that previous to this time Article 3 had prevented union labor from refusing to install An-

derson's nonunion-made material. But Brims himself testified to the contrary:

> I said: " You are a member of that Association and that agreement covers all members of the Association and we expect you now to organize your job in conformity with that agreement." (R. 197.)

21. *Doyle testified the manufacturers claimed business was too bad to grant a preferential discount, and by getting this Article 3 released they might be able to negotiate the discount on those mills.* (M. B. 69.)

As the manufacturers' brief points out, Doyle said that the millmen had claimed in June that by getting this Article 3 released they might be able to negotiate the discount on those mills. (R. 209.)

The manufacturers' brief overlooked the fact that this testimony followed immediately after Doyle's statement that "in a way the trade discount had something to do with Article 3." Reading the two together, it is clear that Doyle meant that the manufacturers stated that *having gotten* this Article 3 released they might be able to negotiate the discount on those grounds.

22. *Doyle testified, "When they (the manufacturers) said that because of Article 3 they had been benefited and might be able to pay a discount, they claimed that business would be better."* (M. B. 70.)

M. B. 70 refers to this testimony of Doyle:

> When *they* said that because of Article 3 they had been benefited and might be able to pay a discount, *they* claimed that business would be better. I heard this half a dozen times. It was common talk and was a part of the argument which *they* used in negotiations with *millmen.* (R. 211.)

The contention is that the pronoun "they" refers to the contractors and not to the manufacturers. A more reasonable construction would be that supported by an insertion of the phrase "which we had" between "negotiations" and "with millmen." So construed it is consistent with the testimony immediately preceding:

> I think there was more manufactured here in the city after that (Article 3) went into effect. I could not say that they manufactured all of it, but they increased their factory capacity and manufactured a much larger percentage.

23. *Doyle testified, "When the millmen spoke of getting Article 3 released, I understood that they wished to stimulate their own business."* (M. B. 70.)

This was not a vague impression, as suggested at M. B. 70, but was the statement of a witness whose testimony as a whole showed an exact memory of the variety of negotiations preceding the unlawful agreement and an intimate knowledge of detail, such as would have given him an abiding impression of the position of those from whom he sought the discount in question.

II

CONCERNING THE ARGUMENT THAT THERE WAS FAILURE OF PROOF AS TO OTHER NECESSARY ALLEGATIONS OF THE INDICTMENT

1. *Concerns whose plants are located outside of said city and state have been unable to sell or deliver in said city any appreciable quantity of said building material so manufactured by them, or ship any such building material to said city in pursuance of sales thereof, and have been compelled to forego carrying on such interstate trade and commerce therein so far as said City of Chicago has been concerned.* (M. B. 71.)

This is supported, among others, by the following evidence:

Testimony of Pottinger (R. 101) that Brims and Church told him that he could not use out-of-town material.

Testimony of Madson (R. 120) that it was necessary to bribe union leaders in order to get nonunion-made material from Muscatine, Iowa, and Oshkosh, Wisconsin.

Testimony of Fisher (R. 127) that union carpenters refused in 1921 to install nonunion goods from Dubuque, Iowa, and Oshkosh, Wisconsin, and (R. 128) that the prices of outside mills were much lower in 1919 and 1920 than those of the inside mills.

Testimony of Panos (R. 135) that the difference in price between inside and outside material was

approximately 35% after 1918, and that up to 1921 "the lid was on tight" against the latter.

Testimony of Finnegan (R. 143) that the Payne Lumber Company of Oshkosh sold material to practically all the millwork dealers in Chicago in 1915, 1916, and 1917, but that "from the first of September, 1919 (the date on which the witness returned to employment after 1918), to the first of September, 1921, practically all the buyers of Payne's material in Chicago were jobbers and mail-order houses, dealers that were doing business out of Chicago proper."

Testimony of Heitmann (R. 161–162) that after 1918 there was a change in Chicago which necessitated changing their plant—nonunion goods became unsuitable to their trade and they were obliged to manufacture nearly everything, in place of purchasing as heretofore from the various companies named by him in Kansas City, the South, Oshkosh, and Muscatine.

Reference is made to the opinion of the Circuit Court of Appeals (R. 352) that results of the agreement of 1918 were decisive in reducing the volume of shipments into Chicago.

2. *The manufacturing defendants throughout said period of time had manufactured practically all of such building material manufactured in said City.*

This allegation, meaning that practically all of the millwork manufactured in Chicago during the

period was manufactured by the defendants in this case, is misconstrued at M. B. 77 to read that practically all millwork *used* in Chicago was manufactured by defendants. Defendant Rinn testified that 80 per cent of the goods of that kind that were manufactured in Chicago were manufactured by the 37 members of Division G. (R. 265.)

3. *A purpose upon the part of the manufacturing defendants to monopolize the business of supplying materials in the City of Chicago.* (M. B. 77.)

4. *A purpose upon the part of the manufacturing defendants to secure excessive prices for their own building material.* (M. B. 78.)

To assume it to be true that manufacturing defendants did not succeed in monopolizing the business and in securing excessive prices would not alter the fact that they had entered into an agreement for that purpose. The agreement itself is unlawful. For testimony that they did in fact succeed to a certain extent in monopolizing the business and in raising prices, see the testimony referred to under Point I, *supra.*

5. *Builders and building contractors had been under the practical necessity of employing members of said organization (United Brotherhood of Carpenters and Joiners of America) and submitting to the rules of said organization because there had not been enough carpenters and joiners there or otherwise obtainable not belonging to said organization to perform more than a very small fraction of the work required to be done in that line.*

M. B. 80 states that "there is not one scintilla of evidence" to sustain this allegation—that it was "taken for granted in Government's opening brief." We refer defendants to R. 80, testimony of H. J. Colgraff, secretary in 1918 of the carpenter-contractors' association:

> There were no carpenters in Chicago outside of union carpenters.

6. *The conspiracy has substantially, materially, and unreasonably restrained interstate trade and commerce.* (M. B. 80.)

This charge is supported by the report to the district counsel appearing at R. 81–82, which shows the fact as revealed to the carpenters and manufacturers that the bulk of the goods coming from outside Illinois came from nonunion mills. This evidence is to be read together with the testimony summarized under I, *supra,* to show the substantial and material character of the restraint.

7. That building in Chicago decreased comparatively is a reasonable inference to be drawn from the evidence to the effect that the cheaper, nonunion-made millwork was excluded.

8. M. B. 68 states that the defendants knew the effect upon commerce from Wisconsin and the Southern States of the refusal to install nonunion-made material.

III

CONCERNING CONTENTION THAT THE DISTRICT COURT ERRED IN INSTRUCTING THE JURY THAT EFFECT IS CONCLUSIVE OF PURPOSE

(a) In M. B. 82 is set out an instruction requested at the time of trial by defendants to the effect that the known effect of certain acts is not necessarily conclusive evidence of the purpose with which such acts are done, and that this known effect must be taken together with all the other circumstances proven by the evidence to ascertain the purpose with which the acts were done.

This instruction asked was refused and the court instructed (M. B. 83):

> Nor is it necessary for the Government to prove that a defendant intended by his actions to violate the Antitrust Act or to restrain interstate commerce. *If he purposely engaged in the conspiracy alleged,* and the necessary and direct result of such conspiracy was to *materially* restrain interstate commerce in the material described, he is legally chargeable with intending that result *and cannot be heard to say the contrary.* (R. 291.) (Italics from M. B.)

There can be no better way of indicating the error of the instruction requested by defendants, and the correctness of the instruction as granted by the court, than to compare that instruction with the language made use of by this Court in *United*

States v. *Patten,* 226 U. S. 525, 543, where this Court said:

> Bearing in mind that such was the nature, object, and scope of the conspiracy, we regard it as altogether plain that by its necessary operation it would directly and materially impede and burden the due course of trade and commerce among the States and therefore inflict upon the public the injuries which the Anti-Trust Act is designed to prevent. See *Swift & Co.* v. *United States,* 196 U. S. 375, 396–400; *Loewe* v. *Lawlor,* 208 U. S. 274; *Standard Oil Co.* v. *United States,* 221 U. S. 1; *United States* v. *American Tobacco Co.,* 221 U. S. 106. *And that there is no allegation of a specific intent to restrain such trade or commerce does not make against this conclusion, for, as is shown by prior decisions of this court, the conspirators must be held to have intended the necessary and direct consequences of their acts and can not be heard to say the contrary.* In other words, by purposely engaging in a conspiracy which necessarily and directly produces the result which the statute is designed to prevent, they are, in legal contemplation, chargeable with intending that result. *Addyston Pipe & Steel Co.* v. *United States,* 175 U. S. 211, 243; *United States* v. *Reading Co.,* 226 U. S. 324, 370. (Italics ours.)

(b) Objection is made (M. B. 84) to the further instruction of the court that—

> The desire to prevent a possible or probable strike and the shutting down of factories would constitute no legitimate excuse for such conduct.

This Court in *United States* v. *Reading Company*, 226 U. S. 324, 370, said:

> Of course, if the necessary result is material to restrain trade between the states, the intent with which the thing was done is of no consequence. But when there is only a probability, the intent to produce the consequences may become important. *United States* v. *St. Louis Terminal Association*, 224 U. S. 383, 394; *Swift & Co.* v. *United States*, 196 U. S. 375.

In *Standard Sanitary Manufacturing Company* v. *United States*, 226 U. S. 20, 49, this Court further said:

> The law is its own measure of right and wrong, of what it permits or forbids, and the judgment of courts can not be set up against it in a supposed accommodation of its policy with the good intention of parties, and it may be, of some good results. *United States* v. *Trans-Missouri Freight Assoc.*, 166 U. S. 290; *Armour Packing Co.* v. *United States*, 209 U. S. 56, 62.

In *Eastern States Lumber Dealers Association* v. *United States*, 234 U. S. 600, 613, this Court said:

> The argument that the course pursued is necessary to the protection of the retail trade and promotive of the public welfare in pro-

> viding retail facilities is answered by the fact that Congress, with the right to control the field of interstate commerce, has so legislated as to prevent resort to practices which unduly restrain competition or unduly obstruct the free flow of such commerce, and private choice of means must yield to the national authority thus exerted. *Addyston Pipe Co.* v. *United States,* 175 U. S. 211, 241, 242.

See also *Duplex Printing Company* v. *Deering,* 254 U. S. 443, 467:

> It is settled by these decisions that such a restraint produced by peaceable persuasion is as much within the prohibition as one accomplished by force or threats of force; and it is not to be justified by the fact that the participants in the combination or conspiracy may have some object beneficial to themselves or their associates which possibly they might have been at liberty to pursue in the absence of the statute.

IV

CONCERNING THE CONTENTION THAT THE DISTRICT COURT ERRED IN INSTRUCTING THE JURY RELATIVE TO THE NECESSITY OF AN UNDERSTANDING BETWEEN THE MANUFACTURING DEFENDANTS AND THE LABOR UNION DEFENDANTS

There was no error in the instruction complained of in Point IV of the brief for millmen defendants. The court did not charge the jury that an understanding between the millmen and labor union de-

fendants was unnecessary, but only that *direct* communication and the attainment of a positive understanding between them was unnecessary. Earlier in the charge (R. 290) the court had pointed out that an essential of the crime was the agreement between the manufacturers and the representatives of the carpenters.

The next sentence in the portion of the charge herein objected to relates to the direct proof submitted by the Government from which the inference of agreement could be drawn. One element of that proof was that while the union defendants and the contractor defendants had under negotiation the agreement in respect of Article 3, the manufacturing defendants counselled the consummation of said agreement, knowing that the agreement was desired in order to exclude cheap, nonunion, foreign-made material. Counsel for the millmen defendants have become confused by the rather awkward coupling of the words "aided and abetted" with the word "counselled" in the charge. It is true that the allegation of the indictment is that the carpenters and contractors aided and abetted the millmen in the conspiracy but as a step in the carrying out of the conspiracy alleged in the indictment the manufacturers had occasion to aid and abet the consummation of the agreement upon Article 3. It is readily conceivable that a party (here the millmen) may counsel, aid, and abet an action or agreement by other parties (here the carpenters and con-

tractors), the effect of whose agreement will be to aid and abet a purpose of the first party.

It is clear that at the time that the manufacturers did counsel, aid, and abet the consummation of such agreement no conspiracy had been entered into between the carpenters and contractors to which the manufacturers became merely accessory. The carpenters and contractors were not yet in agreement upon the illegal contract. But they came into agreement primarily by reason of the counsel and aid of the manufacturers.

Defendants' brief has confused the allegations as to the form of inducement held out by the millmen to their employees—an immaterial allegation not going to the substance of the offense—with that portion of the charge of the court which sets forth the circumstantial evidence upon which those proven to have knowingly and purposely carried the agreement into effect could be proven to have entered into the agreement.

The third objection made by the millmen defendants to this portion of the charge (subheading (c), page 86 of brief) is the same objection raised by them in Points III and V, and is answered elsewhere.

M. B. 87 summarizes their objections to this instruction in three heads:

1. Because it makes the mere restraint of interstate commerce a violation of the Act.

This is error. The instruction makes necessary, direct, and material restraint of trade a violation of the Act.

2. Because it eliminates criminal intent as a factor in the offense.

The answer to this is that proof of actual criminal intent in certain classes of alleged violations of the Antitrust Laws is not necessary. Such proof is not necessary where the result of the conspiracy is to bring about the necessary, direct, and material restraint. This point is dealt with in more detail in response to Point V of Manufacturers' Brief, immediately following.

3. Because the instruction makes effect conclusive of purpose.

Under the decisions of this Court quoted under Point III a necessary, direct, and material restraint is such an effect as is legally conclusive of the purpose of the parties.

V

CONCERNING THE CONTENTION THAT THE DISTRICT COURT ERRED IN INSTRUCTING THE JURY THAT CRIMINAL INTENT WAS NOT NECESSARY AND REFUSING TO INSTRUCT THE OPPOSITE

At page 87 of Manufacturers' Brief appear seven separate instructions requested by defendants which were refused by the court. The first six of these requested instructions go to the point that it was obligatory on the Government in this

case to prove actual intent to commit the crime alleged.

The last instruction is to the same effect, with an added point that if the defendants acted in good faith in the honest belief that they were doing what they had a legal right to do, they must be acquitted even though the necessary effect was to restrain trade.

The position then and now taken by the Government is, that in the trial of indictments alleging a violation of the Sherman Act, where the proven effect of the conspiracy is necessarily, directly, and materially to restrain trade, no evidence of actual intent need be offered by the Government upon which to found a conviction.

Nor can good motives or belief in the legality of one's acts provide a defense for an illegal condition purposely brought into existence.

Reference is made to quotations from decisions by this Court appearing *supra* in the answer to Point III of M. B. which is intrinsically the same point as that here advanced.

The court did instruct as follows (M. B. 89):

> Nor is it necessary for the Government to prove that a defendant intended by his actions to violate the Antitrust Act or to restrain interstate commerce. If he purposely engaged in the conspiracy alleged, and the *necessary and direct result* of such conspiracy was to *materially* restrain interstate commerce in the material described, he is

> legally chargeable with intending that result, and can not be heard to say the contrary. (R. 291.) (Italics ours.)

It is suggested that this instruction conflicts with the decision of this Court in *United Mine Workers* v. *Coronado Coal Company*, 259 U. S. 344.

The answer appears to be that the decision in that case was that the local interference with the mining of coal there shown did not have necessarily such a direct, material, and substantial effect to restrain interstate trade that the intent reasonably must be inferred. It is directly in support of the instruction given herein.

M. B. then cites numerous cases dealing for the most part with prosecutions for criminal conspiracies to commit a substantive offense and therefore inapplicable to a Sherman Act prosecution in which the conspiracy itself is the substantive offense. A Sherman Act conspiracy is not *malum in se*, as suggested by defendants, but under the decision in the *Standard Sanitary case* and others, *supra*, it is rather of the nature of a *malum prohibitum*.

> The judgment of courts can not be set up against it (the Sherman Act) in a supposed accommodation of its policy with the good intentions of the parties and, it may be, of some good results. *Standard Sanitary Manufacturing Company case, supra.*

United States v. *Trans-Missouri Freight Association*, 166 U. S. 290, and *Armour Packing Com-*

pany v. *United States*, 209 U. S. 56, 62, were there cited in support of the doctrine announced.

It will be recalled that the *Trans-Missouri Freight Association* case involved consideration of the illegality of a rate agreement between competing railroad companies, and the defense was made that there was no intent to bring about a restraint of trade. The response of this Court to that position was that the necessary effect of the rate agreement was to bring about a condition inhibited by the Sherman Act and that this Court would not consider the intent involved or the reasonableness of the rate.

Armour Packing Company v. *United States* involved an indictment for receiving a rebate from published and established railroad tariffs. This Court in its decision in that case said (p. 85):

> * * * While intent is in a certain sense essential to the commission of a crime, and in some classes of cases it is necessary to show moral turpitude in order to make out a crime, there is a class of cases within which we think the one under consideration falls, where purposely doing a thing prohibited by statute may amount to an offense, although the act does not involve turpitude or moral wrong. * * *

The doctrine that violation of statutory crimes does not depend upon questions of intent and motive is not therefore confined to the Sherman Act but applies also in interstate commerce proceedings.

In passing, it might be noted that in M. B. 102 the statement is made that no case can be found in this country, Great Britain, or any of its Colonies where any court has ever before intimated that criminal intent was not essential to the crime of conspiracy. Attention is invited in this connection to the opinion of the Privy Council in *Attorney General* v. *Adelaide Steamship Company, Ltd.*, A. C. [1913] 801. The court found that the Australian Statute and the Sherman Law differed as to the element of criminal intent in that the violation of the Australian Statute must always include proof of the criminal intent, while violations of the Sherman Act, as construed by this Court, might occur without proof of sinister intent.

Defendants, however, concede (M. B. 102):

> Of course, a criminal intent may be, and usually is, inferred from the conduct itself, but this is a rule of logic and proof, flowing from the presumption that men intend the known consequences of their acts. But that the criminal intent must actually exist is a universal which recognizes no exception.

In the first sentence this concession substantially covers the contentions of the Government. And if the term "actually" be taken in its ordinary meaning, without reading in "consciously," the second sentence is likewise satisfactory.

In *Nash* v. *United States*, 229 U. S. 373, 377, Mr. Justice Holmes cites with approval the doctrine

announced in *Commonwealth* v. *Pierce,* 138 Mass. 165, 178:

> The very meaning of the fiction of implied malice in such cases at common law was that a man might have to answer with his life for consequences which he neither intended nor foresaw.

Then, again:

> The criterion in such cases is to examine whether common social duty would, under the circumstances, have suggested a more circumspect conduct. (1 East P. C. 262.)

A short legal answer to the comment in M. B. 103 upon certain past divisions of opinion in this Court is, of course, that ignorance of the law excuses no man. And a practical answer is found in the warning of the *Nash case* as to the criterion which should control men in their conduct relative to the common social duty.

The *Patten case,* considered in M. B. 106–109, is in reality but another authority that there need be no allegation or proof of specific intent to restrain trade. The charge of the court below that he whose acts necessarily lead to a result " is legally chargeable with intending that result and can not be heard to say the contrary " finds support not only in the quoted portion of the *Patten* opinion (M. B. 107) that " they are in legal contemplation chargeable with intending that result," but also in the follow-

ing quotation, ignored by defendants but conclusive of their position:

> The conspirators must be held to have intended the necessary and direct consequences of their acts and can not be heard to say to the contrary.

VI

CONCERNING CONTENTION BY MANUFACTURING DEFENDANTS THAT THE DISTRICT COURT ERRED IN REFUSING TO CHARGE THE JURY THAT IT COULD NOT CONVICT DEFENDANTS FOR CONSPIRACY OTHER THAN THE ONE DESCRIBED IN THE INDICTMENT

The express language of the requested charge appears at M. B. 109 and at R. 296.

Examination of this requested instruction discloses that it is couched in the most general language and makes no application to the facts in this particular case. Manufacturers' brief discloses that the conspiracy not alleged in the indictment as to which fear was felt the jury might become confused was that contained in the agreement between the contractors and union labor embodied in Article 3 of Section 3. As to this, the trial court expressly charged (R. 288, folio 384)[1], although

[1] I charge you that if by said article 3 of section 3 of this contract it was intended that there should be a restriction against nonunion-made sash and doors and interior trim, which restrictions should be enforced by a refusal of the members of the labor union to install such material in buildings, and that if the necessary effect of such refusal would be to substantially restrain the flow of commerce in such mate-

such agreement under certain conditions stated in the instruction would be unlawful—

> the execution of this agreement alone, though unlawful, would not warrant a conviction under this indictment, because it does not constitute the conspiracy described therein.

VII

CONCERNING THE CONTENTION THAT THE DISTRICT COURT ERRED IN REFUSING TO CHARGE THE JURY ACCORDING TO THE DOCTRINE ANNOUNCED BY THIS COURT IN THE NASH CASE

At M. B. 111 (R. 300) appears the requested instruction couched in the language used by this Court in the *Nash case*. (*Nash* v. *United States*, 229 U. S. 373, 376.)

Such a general instruction standing alone without specific application to the facts of a given criminal case affords to the jury very little, if any, prac-

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rial into the city of Chicago from outside the State of Illinois by preventing manufacturers of such material outside the said State from selling and shipping their said product into the city of Chicago, then the execution of such contract was unlawful, and any act designed or having the effect of carrying out and accomplishing the purpose intended by such agreement was also unlawful. However, the execution of this agreement alone, though unlawful, would not warrant a conviction under this indictment, because it does not constitute the conspiracy described therein, but this agreement is important for your consideration as you may determine whether it did or did not constitute a part of the conspiracy alleged in the indictment.

tical help in the application of the correct legal doctrines to the facts under consideration.

Where a trial court in its instructions duly recognizes the limitations of law by specific application of its doctrines to the facts of the case on trial, no prejudicial error can arise because of its refusal to give an instruction in general language. Reference to the record discloses that the charge of the trial court applied to the specific facts of the instant case, and that it did so in the language of the *Reading* and *Patten cases.*

At R. 288, folio 384, the trial court told the jury, referring to the unlawful conspiracy that might have existed primarily between the contractors and union labor—

> That is, was it a part of the scheme devised by the manufacturing and union defendants, and participated in by the contractor defendants, which was intended to, or the necessary effect of which was to, prevent the shipment into Chicago of doors, windows, and interior trim from factories located outside of the State of Illinois?

And again, with reference to the alleged object of union labor to prevent work upon nonunion material under the circumstances disclosed by the evidence in this case (R. 289, folio 385):

> However, upon this question I charge you that it is not material what the object was

> that the labor union intended to accomplish by the adoption of article 3, provided that in its accomplishment it was necessary that interstate commerce in doors, sash, and interior trim be substantially restrained.

And again, with reference to the agreement between the contractors and union labor, which the manufacturers counselled and induced, the court said (R. 291, folio 387):

> and (if) any of the manufacturing defendants counseled, aided, and abetted in having said agreement consummated, knowing why the agreement was desired by the union, and that the result would be to materially restrain interstate commerce in the material mentioned, they and all others who knowingly and purposely joined them in carrying such agreement into effect were guilty.

And, again, at the same point in the record with reference to proof of a defendant's guilt:

> If he purposely engaged in the conspiracy alleged, and the necessary and direct result of such a conspiracy was to materially restrain interstate commerce in the material described.

Defendants are dissatisfied with the use of the terms "substantially" and "materially." But these are taken from the opinions of this Court in similar cases.

In *United States* v. *Reading Company, supra,* the Court said:

> Of course, if the necessary result is *materially* to restrain trade between the states, the intent with which the thing was done is of no consequence.

In *United States* v. *Patten, supra,* at page 543, this Court said:

> Bearing in mind that such was the nature, object, and scope of the conspiracy, we regard it as altogether plain that by its necessary operation it would directly and *materially* impede and burden the due course of trade and commerce among the states, and therefore inflict upon the public injuries which the antitrust act is designed to prevent.

It may be noted that a writ of certiorari has been granted by this Court to review the case of *Trenton Potteries Company* v. *United States,* 300 Fed. 550, relied upon by defendants. (M. B. 112.) The Government does not question the correctness as a pronouncement of the law of the instruction requested in that case and in this, but justifies its rejection by a trial judge who fulfills its requirements by applying it in his charge to the facts at issue. So in the *Reading* and *Patten cases* and in the case at bar the directness and material or substantial qualities of the restraints render them "undue" within the terms of the *Nash case.*

VIII

CONCERNING CONTENTION THAT THE DISTRICT COURT ERRED IN REFUSING TO INSTRUCT THE JURY THAT IF THE MILLMEN'S LABOR COMMITTEE ACTED IN GOOD FAITH MERELY IN ORDER TO AVOID A STRIKE THEY WERE NOT GUILTY

This has heretofore been dealt with in connection with discussion of Point IV.

However, we call attention to the following statement (M. B. 113):

> This instruction embodied in simple and concise language *the entire defense of the labor committee of the millmen defendants.*

It would seem that this statement concedes all the other allegations of the Government with reference to the activities of the labor committee, and by inference the alleged effect of their acts.

IX

CONCERNING THE CONTENTION THAT THE CONDUCT PROVED WAS NOT VIOLATIVE OF THE SHERMAN ACT

The contention here made (M. B. 114) includes another summarization of the primary facts supposed to be established by the evidence in this record, and of inferences drawn therefrom most favorable to defendants. But the duty to draw inferences was upon the jury, and it has chosen to draw the inferences unfavorable to defendants. The facts supporting them have been set forth in

the Government's main brief and in this reply brief. Further, certain errors of fact made by defendants in their summarization have been considered under Point I of this brief.

X

CONCERNING THE CONTENTION THAT AS TO THE MILLMEN OTHER THAN THEIR LABOR COMMITTEE NO THEORY OF GUILT CAN BE EVOLVED

The contention is made that whatever may be the guilt of the labor committee of Division G this record discloses no facts from which the jury could find guilt on the part of the other millmen.

Briefly stated, the facts disclosed by this record, which show ratification and acceptance on the part of the other members of Division G and participation in the execution of the illegal conspiracy counseled and induced by their labor committee, and upon which a verdict of guilty by a jury can be sustained, are as follows:

1. The acquisition of full and complete knowledge, at least on April 19, 1918, of all the transactions and promises of the labor committee of Division G in relation to the counseling, procurement, and inducement of the acceptance by the contractors of the modification of Article 3, which was intended, and was known by all parties to have the effect of bringing about noninstallation of foreign-made material in the city of Chicago. (R. 24, 256, folio 342.)

2. Subsequently carrying into effect in concert that part of the prior illegal understanding as to the installation of goods on hand and ordered up to a certain time by reporting to proper officers of Division G their stocks on hand and ordered, and the joint execution of the plan by having the union defendants stamp such material, so as to permit its installation in conformity with the exception made in the agreement not to install. (R. 24, 30, 73, 88.)

3. The authorization on the part of the membership of Division G to a committee temporarily substituted for the labor committee to continue to negotiate with the contractors' committee along the lines previously followed by the labor committee, by offering a 5% discount in lieu of a 15% discount, and continuing the preferential feature of that discount. (R. 36–37.)

4. The attempt to establish a bureau to check up whether or not the union committee were in good faith refusing to install nonunion-made goods. (R. 35–36.)

5. After prolonged continuation of the original negotiations, the granting of a discount of 15% as originally promised by the labor committee, made applicable by advice of counsel to all contractors. (R. 40, 169, 51.)

The proof of the connection between this discount as granted and the original tender by the labor committee, and the relationship which both of these offers bear to the adoption of Article 3 in modified

form, and the exclusion of nonunion-made goods is found in the fact that when the discount was granted in 1919 it was in express terms made to expire on May 31, 1921, the exact date on which the outside agreement between the contractors and the outside carpenters ended. (See Article 8 of that agreement as it appears in the record, R. 40-41.)

This subsequent course of conduct on the part of members of Division G also affords evidential facts upon which a jury would have the right to consider and arrive at a decision as to the original participation of these other manufacturer defendants in the conspiracy alleged in the indictment.

This class of evidence is specifically referred to and covered by the instruction of the trial court appearing at the head of Point IV in this brief.

CONCLUSION

The judgment of the Circuit Court of Appeals should be reversed and that of the District Court reinstated.

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OCTOBER, 1926.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1925.

UNITED STATES OF AMERICA,
Petitioner.

vs.

WILLIAM F. BRIMS, et al.,
Respondents.

Answer of William F. Brims and Those Other Respondents Designated in the Record as "Union Defendants", to the Petition for Writ of Certiorari, and Brief Opposing Said Petition.

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CHAMPLIN LAW PRINTING COMPANY, CHICAGO

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STATEMENT OF THE CASE.

The Circuit Court of Appeals reversed a judgment of the District Court, in which respondents were found guilty of violating the Sherman Law.

The indictment alleged that certain concerns, located outside of Illinois, manufactured sash, doors and other interior trim, for buildings, and desired to sell their product in Chicago; that their interstate trade was restrained by the conspiracy of the defendants, in the following manner:

It is alleged that the manufacturer defendants made most of the sash, doors and interior trim used in Chicago; that they wanted to establish a local monopoly and secure excessive prices; that to accomplish this, they formed a conspiracy in restraint of the interstate trade

of the out of state concerns, and made a proposition to the carpenters' union to hire only members of the union in their factories, on condition that the members of the union, would agree not to install any sash, doors or interior trim manufactured outside of Illinois.

It is alleged that there were very few non-union carpenters in Chicago, and therefore contractors were under the practical necessity of employing members of the union to install material in buildings.

It is alleged that the union accepted the proposition of the manufacturers, and that the bargain was carried out, with the result that the out of state concerns were unable to sell their goods in Chicago, and so were obliged to forego carrying on interstate commerce here.

Certain officials and members of the union are named as having been active in aiding the manufacturers in carrying out the conspiracy, as are certain officials of the Contractors' Association.

It is alleged that all defendants knowingly intended to restrain interstate trade, in the manner above described.

The indictment does *not* allege any boycott, coercion, intimidation, or affirmative interference with any person whomsoever.

It does not allege any *direct* interference with interstate trade, but merely that *as a result* of the refusal of union carpenters to install trim which had been manufactured outside of Illinois, the out of state concerns were unable to sell and ship their goods to Chicago.

The Facts.

The statement of facts in the petition is so abbreviated that it is thought necessary to give a more detailed statement.

The United Brotherhood of Carpenters and Joiners of America is a voluntary association, a labor union, having about 400,000 members, grouped in some 2,000 local unions, throughout the United States and Canada. At the time of the acts charged in the indictment, 1918 to 1921, there were some 17,000 union carpenters, grouped in 37 local unions, in Chicago. About 3,500 of these, in 7 local unions, were called "inside carpenters," because they worked in factories which manufactured sash, doors, and other trim. The rest were called "outside carpenters"; they installed trim and other material in the erection of buildings. The division of union carpenters into "inside" and "outside" men was general all over the country (Rec. 112, 123, ff).

The United Brotherhood was organized in 1881, has a constitution (Rec. 235 to 241), general executive officers, traveling organizers, and maintains a systematic organization, with laws, rules, regulations and subordinate bodies having the usual officials and business agents.

The objects of the Brotherhood are those common to labor unions,—to secure better wages and working conditions for its members; to improve their social and economic life, and to provide some financial aid in case of accident, sickness or death.

Nearly forty years ago the Brotherhood adopted a label (Rec. 126 and 239), which it has had registered in every state, which label is affixed to or stamped upon the sash, doors, trim and other products manufactured by members of the union. And for more than twenty

years the constitution of the Brotherhood has contained a provision directing or demanding that outside carpenters insist that the union label appear on all sash, doors and other trim installed by them in buildings (Rec. 241).

The place of manufacture was not considered at all; in fact, there was no way a carpenter could tell where the material had been manufactured (Rec. 264).

The purpose of the union in demanding the union label on trim they installed was stated by Government's witness Galvin as follows (Rec. 127): "The purpose of the union label was to better conditions and wages in the mills, and also to see if it would increase the membership, and to show that an effort was being made to bring both branches of the trade up to the same level." The purpose was also stated by defendant Brims, and his statement was not controverted or questioned throughout the trial. He said (Rec. 260, 261):

> "Because the members of our own organization were manufacturing that material; and by refusing to handle nonunion-made material we would create a demand for union-made material, thereby building up our organization, and induce more manufacturers to hire or employ union men. By hiring and employing union men it would make a stronger organization, whereby we could improve the conditions of our trade and our membership; also for the having of collective bargaining. Never gave the matter of restraining interstate trade a thought."

The Carpenters' District Council is a sort of quasi governing body of the union in Chicago and vicinity. It is composed of about 100 delegates, elected annually, by the various local unions (Rec. 112). Its authority is very limited, as all of its acts of any importance must be approved by a referendum vote of the membership before becoming effective (Rec. 126).

The Carpenter Contractors' Association was composed of some 500 of the leading contractors in Chicago (Rec. 81).

The working agreement between the Contractors' Association and the District Council (Rec. 82) had to do only with outside carpenters. The inside carpenters did not vote on it; nor did the inside carpenters participate in electing the outside arbitration board. They elected their separate board to negotiate with their employers (the manufacturers of trim), and separately voted on their own working agreement. That is, each group negotiated and adopted its own working agreement, without any aid or interference from the other group.

There were about 150 manufacturers of sash, doors, trim, etc., in Chicago (Rec. 264), all but two of whom employed union carpenters, exclusively, and had done so continuously for about 15 years (Rec. 268).

About 37 of the manufacturers were members of Division G of the Lumbermen's Association of Chicago.

This Division G had various committees, one of which was the labor committee, which corresponded to the arbitration board of the Contractors' Association, and negotiated working agreements, triennially, with the board or committee of the *inside carpenters* (Rec. 33, 34).

In 1900 a controversy arose between the union and the contractors, resulting in a lockout which lasted 13 months (Rec. 128).

One of the chief points in controversy was the policy of the union, enunciated in its constitution, that outside carpenters would not install non-union made trim. The union was at last forced to yield, and a working agreement was signed which contained the following clause: "*There shall be no restriction in the use of any manufactured material except prison made.*" (Rec. 128).

By this agreement, the union was obligated, contrary to its established policy, to install non-union sash, doors and trim. As each new triennial working agreement was negotiated, the union fought to eliminate this Art. 3, as it was called (Gov. Ev. Rec. 66, 128, 359), but was repeatedly forced to yield, after strikes of longer or shorter duration (Rec. 128, 322).

The membership resented this situation, and at the expiration of each agreement, the various outside local union sent communications to the District Council, urging the elimination from the next agreement of this Sec. 3 of Art. 3, for the reason that it "tied their hands," and prevented them from carrying out the constitutional policy of the union in regard to the installation of non-union trim (Rec. 128).

In 1918 there were about 2,000 factories in the country manufacturing sash, doors and trim which bore the union label, of which some 300 were in Illinois (Rec. 264).

During 1917 the District Council sent investigators to survey working conditions in some of the non-union mills in other states, and these reported back that they had found wages exceedingly low, hours long; that women and children were employed in some of the factories at wages as low as 8 cents an hour (Rec. 254). Whereupon the District Council passed a resolution requesting the general officers of the Brotherhood to send organizers into those localities to persuade the employes to join the union, and to secure them more favorable wages and working conditions (Rec. 254).

In the latter part of 1917, and early in 1918 the sentiment against making another agreement which obligated outside carpenters to install non-union trim, against the long established union policy, and as they believed, to the injury of the union and their fellow members, had reached

the boiling point. The membership strenuously demanded that their hands be untied, by the elmination of Sec. 3 of Art. 3 from the next agreement with the Contractors' Association (Rec. 128). It was the openly avowed intention of the outside carpenters, well known to the Contractors' Association, to refuse to install non-union trim as soon as they could be freed from their contract obligation to install it; and that without any regard to whether it had been manufactured in Illinois or some other state (Rec. 128). No objection was ever made to installing trim manufactured in other states if it bore the union label (Rec. 128). In fact, members of the union in Chicago contributed money to send organizers into other states to urge the unionization of factories there (Rec. 125, 126 and 254).

About the middle of 1917, the outside carpenters elected their arbitration board, and the inside carpenters elected a special committee to negotiate new working agreements, the first with the Contractors' Association, the latter with the manufacturers of trim, their respective employers.

The old agreement between the inside carpenters and the manufacturers was to expire March 31, 1918. The old agreement between the outside carpenters and the Contractors' Association was to expire May 31, 1918.

This committee for the inside carpenters met privately, and formulated a proposed new three-year agreement to present to their employers (Rec. 255). Early in December, 1917, they met the manufacturers' committee by appointment. They took with them defendant Brims, because he was president of the District Council (Rec. 255).

Wittman, chairman of the union committee, handed to the labor committee several typewritten copies of the proposed new agreement as prepared by his committee.

The manufacturers' committee said they would go over the new agreement, submit it to their association (Division G) and would notify the union men when they were ready to discuss the matter further (Rec. 255 and 321). The proposed new agreement asked for an increase in wages (the existing scale was 45 cents), a reduction of the hours from 8½ to 8, and a half holiday on Saturday. Otherwise there was practically no change from the old agreement.

The union committee waited to hear from the manufacturers, and upon notice from them, the next meeting was held about the 6th of March, 1918, the same persons being present. Wittman, chairman of the union committee, asked for an answer to the proposition the committee had submitted at the December meeting. Mr. Rinn, for the manufacturers replied that they did not feel that they could grant the wages asked for, which were 55 cents an hour for the first year, 60 cents for the second year and 65 cents for the third year, pointing out that on account of the war the Government had stopped the shipment of building materials; that some of the factories were practically at a standstill, and that business was very bad. One of the union men replied: "We must get more money. The men are leaving the shops and going into other lines of employment; laborers on the streets are receiving more than we are; the cost of living has increased, according to Government reports, over 50 per cent. * * * If we cannot get any more wages at this time, we too will have to leave the shops and go into some other line of occupation." Rinn replied, "You need us and we need you. While it is true that times are hard now, we hope it won't always be this way." Brims said, "Now, men, let's throw our cards on the table and see if we can't settle this today" (Rec. 256 and 321).

Before deciding the wage question, the argument passed on to the question of the 8-hour day, and Mr. Rinn said, "Well, we knew that was coming. We saw the handwriting on the wall." After some further discussion, the manufacturers' committee retired for consultation, and on their return said, "Now, boys, this is the best proposition we can make you; 50 cents for the first year, 55 cents for the second year and 60 cents for the third year."

Whereupon, the union committee retired for consultation, and Mr. Brims said to the committee, "Let's make them this proposition; we can see that these men are up against it because of the times, and we cannot afford to go on a strike. Let's accept their proposition on wages, provided they give us double time for Saturday afternoon."

The committee approved of this suggestion, returned to the conference and said, "Gentlemen, if you will agree to give us double time for Saturday afternoon, we will accept your proposition. The manufacturers looked at each other; nobody said anything for a moment, and then Mr. Rinn said, "Go ahead. We will recommend this to our division and make an agreement on that basis with you, if you fellows will recommend it to your council for a referendum at the locals, and pass it" (Rec. 257 and 328, 329).

Brims replied, "You might consider the agreement fixed on that basis. We will see it goes through on that basis if you will." Rinn said, "All right, we will."

This committee had already been given authority by Division G to make an agreement without referring it back to the division.

Nothing whatever was said at either of the meetings about the proposed new agreement between the Contrac-

tors' Association and the outside carpenters; nothing whatever was said in regard to Art. 3, nor in regard to the installation of non-union or out of state material. Nothing whatever was said about employing union carpenters, only, in the factories, because that had been an unquestioned custom for 15 years, and the paragraph in the new agreement covering that matter was not even discussed, but was taken for granted by both sides. Neither had these matters been discussed privately between the manufacturers and representatives of the union (Rec. 257 and 329).

On April 1, 1918, the manufacturers began to operate under the terms of this agreement, and continued to do so thereafter (Rec. 258).

No further conference was held, nor did any communication of any kind pass between representatives of the manufacturers and representatives of the union from March 6th until some time in May, several weeks after the signing of the *outside* agreement with the Contractors' Associatioon. On this occasion, a committee from the manufacturers attended a meeting of the joint arbitration board, representing the Contractors' Association and the union, and stated that they had a lot of manufactured material on hand which they had before the new agreement had been signed up between the Contractors' Association and the union. It did not bear the union label, and they said they didn't know what to do with it. Mr. Brims, on behalf of the union, suggested that a stamp be made which should read, "O. K., Carpenters' District Council," and that all of this material on hand, or already ordered, should be stamped, and would be installed by union carpenters (Rec. 263). Thirty-three of these stamps were made, and one placed in the hands of the union steward in each shop which had such mate-

rial on hand. The stewards stamped the goods on hand and returned the stamps to the District Council.

No other conference was held, and no other agreement of any kind or character was made between the manufacturer defendants and the union, or any of its representatives (Rec. 257).

Nowhere in the record is there a word of evidence that the manufacturer defendants made an offer to the union to hire union carpenters, only, in their factories, if the union or its members would agree not to install sash, doors or other material manufactured outside of the state. Nor is there a word of evidence that the union accepted such an offer. The subject was never mentioned between them, and there is no evidence whatever that the union was even remotely influenced by the manufacturers in its policy and conduct in regard to non-union material. All witnesses, both for the Government and for the defense, agree that no such offer was ever suggested, nor was there ever any discussion between the manufacturers and the union representatives, regarding Art. 3, or the outside carpenters' contract, or the policy of the union regarding non-union material, or out of state material.

It had been customary for more than 20 years for the union to make working agreements with the Contractors' Association, each of which ran for a three-year period.

At every such triennial period, one of the principal bones of contention had been Sec. 3 of Art. 3, which obligated outside carpenters to install non-union made trim contrary to their wishes and to the adopted policy of the union (Rec. 275). On several occasions, notably in 1912, and 1915, the union had gone on strike in an attempt to eliminate Sec. 3 of Art. 3 from the Working Agreement, but had been unsuccessful. In the latter part of 1917, in

response to the general demand on the part of the outside carpenters in the Chicago district that the new agreement, which was to go into effect on the first of June, 1918, should not contain any obligation upon union carpenters to install non-union trim, the Arbitration Board for the union notified the contractors that, in the new agreement, Sec. 3 of Art. 3 must be eliminated or substantially changed (Rec. 128).

The union wanted this Sec. 3 of Art. 3 entirely eliminated, because, as stated by Mr. Brims (Rec. 260), "it didn't want to be bound down by a contract to do things that were foreign to the policy of our organization." Their reason was stated by Government's witness Galvin (Rec. 128) as follows:

> "For the general benefit of their members in Chicago, * * * for the benefit of the millmen (i. e., inside carpenters); to get a larger membership, and for better conditions in the locality where they would be organized."

The testimony of the union defendants was, that in seeking to eliminate Sec. 3 of Art. 3 from the Agreement, and in enforcing the union policy, they had no purpose to restrain interstate trade, or to aid the manufacturers to do so, and never gave that matter a thought (Rec. 261).

Sometime previous to February 23, 1918, the Joint Arbitration Board reached an agreement providing a wage scale of 80 cents per hour, and providing that Sec. 3 of Art. 3 should read as follows: *There shall be no prison made material used*" (Rec. 261). The Contractors' Board had offered to pay 85 cents an hour, if the union would agree to allow Section 3 of Art. 3 to remain as it was in the old agreement, but this was not acceptable to the union. The proposed new agreement was sent out to a referendum vote of the outside carpenters and was carried almost unanimously. The Contractors' Associa-

tion, however, rejected the agreement because of the new form of Section 3 of Art. 3, sent the agreement back for further negotiation, and the Joint Arbitration Board held another meeting on April 9th (Rec. 262).

Mr. Brims told the Board, "This is going to be our last meeting; if we won't do something now, we won't have any more meetings," and Brims testified (Rec. 274), that if no agreement had been reached at this meeting, the union would have quit negotiating with the Contractors' Association, and would have proceeded to get the contractors to sign the Agreement individually in the form it had been adopted by the union, except that Art. 3 would be eliminated (Rec. 274, 275).

Various members of the joint Arbitration Board suggested modified forms to take the place of Section 3 of Art. 3. Respondent Ryan, Secretary of the Board, suggested that they take the form as it was in the Union Working Agreement in New York. He said that they had had it there for six or eight years and found it to work out very satisfactorily to the organization; that it had just passed through the courts, and the highest court of New York had sustained it and said it was a good thing for the union (Rec. 262).

Ryan had there, and read, a certified copy of the opinion of the Court of Appeals of New York, in the case of *Bossert* v. *Dhuy,* 221 N. Y. Rep. 342. The document was identified and offered in evidence, but was ruled out by the court (Rec. 262-270 and 303 to 310).

Ryan had the New York form of Art. 3 there, and submitted it; it read as follows:

> "That there shall be no restrictions against the use of any manufactured material, except non-union and prison-made."

After some discussion, Mr. Doyle on behalf of the contractors, proposed that the following clause be added to the form suggested by Mr. Ryan:

> "This shall not apply to machine-made flooring, ceiling or ceiling partition, plain lumber or hardware of any kind."

This was acceptable to the union men, as it left them free to carry out the union policy regarding non-union trim (Rec. 262).

The union did not object to the clause suggested by the contractors, because no union carpenters in the district were employed in the manufacture of "machine made flooring, ceiling, ceiling partition, plain lumber or hardware of any kind" (Rec. 272).

Someone prepared the entire section with a typewriter, on a slip of paper, and it was pasted over Section 3 of Art. 3 in the agreement that the outside carpenters had recently approved, taking the place of the form which read:

> "There shall be no prison-made material used."

From the standpoint of the union, the effect was the same,—to leave the union free from contract obligation to install non-union trim.

As so modified, the new agreement was executed by the Joint Arbitration Board and became effective in accordance with its provisions, on June 1, 1918.

According to all of the testimony, in all the negotiations between the representatives of the Contractors' Association and the representatives of the union, nothing whatever was said by anyone about the manufacturers of mill work; nobody discussed at any time what interest the manufacturers might have in Art. 3 or in the elmination of Art. 3. Nor were there any discussions at any

of these meetings regarding any trade discount to be given by the manufacturers to the contractors. According to the undisputed testimony, the union representatives had no knowledge at any time of any negotiations between the manufacturers and the contractors; were not present at any of their meetings, and were wholly uninformed as to what took place there. They conducted their own affairs and their negotiations with the contractors without the reference to, or knowledge of, the wishes or interest of the manufacturers. They testified they were not influenced to the slightest degree by the manufacturers, and there is not a particle of evidence to the contrary (Rec. 266, 267).

After June 1, 1918, the outside union carpenters, generally, refused to install sash, doors and trim which did not bear the union label, whether such material had been manufactured in Illinois or in other states; *they had no means of knowing where it had been manufactured* (Rec. 268, 269). If it bore the union label, they installed it without regard to, or knowledge of, where it had been manufactured (Rec. 128 and 157).

The Government put in a large amount of evidence showing that union carpenters refused to install non-union trim *which had been manufactured in Chicago* (Rec. 137 to 207).

The evidence shows that after June 1st, certain out of state manufactures, who had been selling and shipping non-union made sash, doors and trim to dealers in Chicago, were unable to sell as much as before, the reason given by such dealers being that the union carpenters would not install non-union trim (Rec. 162, 163, 187).

Other out of state concerns which furnished union made trim did a much larger business in Chicago, so that the total volume of interstate trade in such material remained about the same as before.

All witnesses agreed that the only way the union carpenters "interfered" with their business, or "prevented" them from selling, buying, or using non-union trim, was *by their refusal to install it.*

There is no evidence that the union used any threats, violence, coercion or intimidation. They made no effort to prevent non-union carpenters or any one else from installing such material.

There was no "secondary boycott" of any one, nor any *affirmative act* of any kind or character to prevent the sale or use of, or to restrain interstate trade in, non-union material.

They just refused to work on it. That is the testimony of all witnesses, both for the Government and for the defense.

And the undisputed testimony is that their sole *purpose* in refusing to install non-union material was to better the condition of themselves and their fellow members, and to strengthen the union; that they had no purpose to restrain interstate trade, and "never gave it a thought."

The union is shown, by all of the testimony, to have pursued its own course, openly, without divergence, on its own intitative, uninfluenced by any one, solely for its own lawful betterment.

The Government (and other defendants) offered evidence (over the objection of the union defendants), of numerous meetings of Division G, and of the Contractors' Association; of the minutes of such meetings, and of discussions which there took place; of correspondence between officers and members of Division G; of conferences, negotiations and an agreement between representatives of the manufacturers and of the contractors, relative to trade discounts, mutual cooperation, and having a clause

referring to the working agreement between the Contractors' and the Union, with special reference to Art. 3 (Millmen's Ex. 1, Rec. 291).

From all this evidence it appears that in order to avoid a strike, the manufacturers' representatives urged the contractors' representatives to yield to the demand of the union to modify Art. 3.

All witnesses agree, however, that the union defendants were told nothing of these matters. The first they ever heard of them was in the trial of this case. The evidence shows that their conduct was not influenced in any way whatever by these meetings, discussions, conferences and agreements between the manufacturers and the contractors, of which they had no knowledge.

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

I.

This Court is Without Lawful Authority to Issue the Writ of Certiorari in This Case.

Sec. 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, under which the Government invokes jurisdiction, is unconstitutional. It attempts to vest in this court power specifically prohibited by the Fifth Amendment to the Constitution.

This court has held that the constitutional provision against being twice put in jeopardy, denies to the Goverment the right of appeal or writ of error in a criminal case, after a trial on the merits.

The effect of issuing the writ of certiorari under this statute is equivalent to granting an appeal or writ of error.

A statute cannot give an authority which is denied by the Constitution.

Kepner v. *U. S.*, 195 U. S. 100.
U. S. v. *Dickinson*, 213 U. S. 92.
U. S. v. *Torno*, 199 U. S. 521, 533.
Stroud v. *U. S.* 251 U. S. 18.
U. S. v. *Sanges*, 144 U. S. 310.

The authority of this court to issue the writ of certiorari in this case is questioned with hesitancy and some embarrassment. The court has issued the writ in similar cases since the enactment of the amended statute some years ago. But while the question of jurisdiction has been raised, it is not clear from reported cases, that the question of the constitutionality of the statute giving this authority has been raised or decided.

This court held in the *Kepner* case (*supra*), that the guaranty against second jeopardy (extended to the Philippine Islands by act of Congress substantially in the words of the Fifth Amendment), denied to the Government the right of appeal in a criminal case. The *Kepner* case has been cited and followed in later cases, and the doctrine seems to be the settled law of the United States and of nearly all of the several states.

In the *Kepner* case, the court quotes with approval from 1 Bishop Criminal Law (5th Ed.), Sec. 1026, as follows (p. 131):

> "A legislative provision for the rehearing of criminal cause cannot be interpreted—or, at least, it cannot have force—to violate the constitutional rule under consideration, whatever be the words in which the provision is expressed. When, therefore, a defendant has been once in jeopardy, the jeopardy can-

not be repeated without his consent, whatever statute may exist on the subject. Such a statute will be interpreted with the Constitution, and be held to apply only to cases where it constitutionally may. And if it undertakes to give to the State the right of appeal, to retry the party charged, after acquittal, it is invalid. And so the writ of error, or the like, allowed to the State, can authorize the State to procure the reversal of erroneous proceedings and commence anew, only in those cases in which the first proceeding did not create legal jeopardy."

In the same case (p. 133), this courts says:

> The *Ball* case, 163 U. S., *supra*, establishes that to try a man after a verdict of acquittal is to put him twice in jeopardy, although the verdict was not followed by judgment. That is practically the case under consideration, viewed in the most favorable aspect for the Government. The court of first instance, having jurisdiction to try the question of the guilt or innocence of the accused, found Kepner not guilty; to try him again upon the merits, even in an appellate court, is to put him a second time in jeopardy for the same offense, if Congress used the terms as construed by this court in passing upon their meaning. We have no doubt that Congress must be held to have intended to have used these words in the well settled sense as declared and settled by the decisions of this court.

In the instant case, the Circuit Court of Appeals, on writ of error, reversed the judgment of conviction in the District Court, holding that there was no proof of the crime charged in the indictment. The respondents have been in jeopardy, and by the judgment of the Circuit Court of Appeals are found not guilty. Now the Government asks this court to issue a writ of certiorari ordering that the cause be certified up for determination "with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted writ of error or appeal" (Sec. 240 (a) Judicial Code).

If the writ issues, the respondents will again be put in jeopardy.

It cannot fairly be said, as was the case in *Stroud* v. *U. S.*, 251 U. S. 18, that the respondents have themselves "invoked the action of the court," and thereby waived the protection of the constitution against second jeopardy. It is true they took the case to the Circuit Court of Appeals, but they are not now invoking the action of this court.

If it be said that the Fifth Amendment protects only against jeopardy to "life or limb," that is, in felony cases, whereas this is a misdemeanor, there are two replies. First, that the protection has always been regarded as extending to both felonies and misdemeanors. Second, that the statute in question does not limit the authority to issue the writ, but covers *all* criminal cases.

It seems inevitable therefore, that this court must either hold the statute unconstitutional, or overrule its former decisions on the doctrine of second jeopardy.

II.

The Reasons Assigned in the Petition (p. 10), for Issuing the Writ of Certiorari Are Insufficient.

1. The first reason is that in view of present conditions, this court should "pass upon the question whether or not there may be formed combinations of labor employers of all classes and functions in any particular industry and their respective union labor employes, which do restrain interstate trade," etc.

This court has repeatedly passed on that question. Respondents claim no right to form such combinations. No such question is presented in the record.

The indictment alleged specific facts, and charged that those facts constituted a conspiracy in violation of the Sherman Law. The Circuit Court of Appeals held that the proof failed to support the allegations in the indictment, and reversed the judgment.

The statement of facts in the petition is entirely inadequate to give a fair view of the case; but a glance at the evidence set out in the record will show the decision of the Circuit Court of Appeals to be correct and inevitable.

2. The second reason assigned for the issuance of the writ, is that "the Circuit Court of Appeals has gravely erred in disregarding, or in applying to the facts in the instant case, the doctrines of law as to intent and purpose which have been heretofore announced by this court," in certain cases.

Those doctrines were quite fully discussed in the briefs and in oral argument, and it is submitted that the decision of the Circuit Court of Appeals is in exact line with those doctrines.

The argument in the petition is that while the actual conduct of the respondents as shown in the record had to do with local matters, and were not in direct restraint of interstate trade, yet the purpose and intent of respondents was to restrain that trade, and therefore the law was violated.

The intent or purpose with which acts are done is important, of course; but *it must appear in the facts, properly alleged and proved*, not merely by way of a conclusion of the pleader or prosecutor.

The indictment, after stating in general terms that the defendants had entered into a conspiracy in restraint of the interstate trade of certain concerns, goes on to set out the specific facts, saying:

"which said unlawful conspiracy and the circumstances under which the same was formed and has been consummated, are, now here described in detail."

Then follows allegations of facts which constitute the material charge in the indictment.

Let these allegations of facts be set out. They appear in the following order:

1. The work of installing building materials in houses, in Chicago, is practically all done by union carpenters.

2. Contractors and builders here have been practically compelled to employ union carpenters for this work, and to submit to the rules of the union, because of scarcity of non-union carpenters.

3. Before April 18, 1918, the manufacturer defendants employed about 3,500 "inside" carpenters, in their factories, many of whom were not members of the union.

4. On the above date, by offering to employ thereafter as such "inside" men only union carpenters, the manufacturers induced the union and its members to refuse to install, in buildings in Chicago, any material which should be sold, shipped and delivered to builders here, by certain concerns located in other states.

5. The union accepted the offer made by the manufacturers, and both groups thereafter "conducted themselves accordingly."

6. "So effectively have they worked in unison with respect to the matters aforesaid," that the out of state concerns have been "unable to sell or deliver in said city any appreciable quantity" of their building materials, and "have been compelled to forego carrying on such interstate trade."

7. The resulting scarcity of, and the exorbitant prices for such material, have caused the people of Chicago to forego the erection of buildings needed for their welfare.

Those are all the facts set out in the "detailed description" of the alleged conspiracy.

The only material facts properly charged against the union defendants are that they accepted the offer of the manufacturers to hire more union carpenters, if union carpenters would refuse to install material sold in Chicago by the out of state competitors of the manufacturer defendants; and that the union carried outs its bargain.

In closing, the indictment alleges that all of the defendants "well knew all of the circumstances and premises aforesaid, and intended to bring about the abovementioned result of said unlawful conspiracy, and to restrain said interstate trade and commerce in the way above described."

Let the evidence be examined to find, if possible, a solitary trace in the entire record, of this bargain between the manufacturer defendants and the union, which is the very soul and substance of the indictment.

The actual contract between the manufacturers and the union was put in evidence as Governments's Exhibit 5 (Rec. 38). Upon a careful scrutiny of that agreement, not a suggestion will be found of the bargain charged in the indictment. At no time during the trial did the attorneys for the Government suggest that Exhibit 5 contained anything illegal or improper, or indicative of the agreement charged in the indictment. The record is undisputed and conclusive that the manufacturer defendants (except Nollau & Wolff), *had employed union carpenters exclusively for more than* 15 *years* (Rec. 316), and that in negotiating the new working agreement, the subject of employing union carpenters only, was never even discussed, but taken for granted by both sides; and this Agreement, Exhibit 5, contains no reference to out of state material, or to non-union material; nor is there any reference to the conduct of the outside carpenters.

The Government's principal witness, E. E. Hooper, was secretary of the Lumbermen's Association and of Division G, attended all the meetings, kept the records, handled the correspondence, and was intimately familiar with everything that was done by the manufacturer defendants. He stated positively (Rec. 73), that *no such agreement as that charged in the indictment, was ever made* between the manufacturer defendants and the union.

Defendants Brims and Rinn (and by stipulation), defendants Wittman, Smith, Fox, Muszalski, Sommers, Morris and Reynolds, all testified positively to what was said and done in the negotiations between the manufacturers and the union representatives, and all testified that at no time in any of these conferences, or in any private communications, did the manufacturer defendants and representatives of the union ever discuss the subject of out of state material, or of union carpenters refusing to install out of state material or non-union material; that the manufacturers never made the offer charged, nor anything like it; that there was never a bargain, nor any "understanding" of the nature charged in the indictment (Rec. 257, 258, 259, 263, 267, 321, 328, 329, 350, 351, 364, 365).

No witness testified that any such agreement was ever made, or even suggested; and there is not a line in all of the written documents put in evidence, that even hints at such an agreement between the manufacturers and the union.

The working agreement between the manufacturers and the union was agreed to on March 6th, ratified by the union a few days later, and was fully *consummated and in operation* on April 1, 1918, twelve days before the making of the outside agreement between the Contractors'

Association and the union, which contained the much criticized Art. 3.

All of the evidence, both for the Government and for the defense, is conclusive that the union carpenters did not refuse to install material because it had been manufactured outside of Illinois, but that they did on their own initiative refuse to install trim which did not bear the union label, whether it had been manufactured in Chicago or in other states. The evidence is undisputed and conclusive that they installed all material which bore the union label, without regard to its place of manufacture.

The uncontradicted testimony of all witnesses, who gave evidence on this subject, was that the manufacturers *made no attempt whatsoever to influence the union* in regard to the kind of material its members would install; that there was never any communication between them, either directly or indirectly, on that subject; that whatever efforts the manufacturers made to influence the contractors, were made without the knowledge of the union or its representatives.

There was not the slightest occasion for the manufacturers to attempt to influence the union in this regard. The policy of the union was known to all; it had been publicly announced for 25 years. The union regarded it as so necessary to the welfare of its members, that it had made several costly fights to achieve the freedom to carry out that policy. It was now fighting to the last ditch,—*even refusing an offer of 5 cents an hour more in wages* (Rec. 261, 281), *an aggregate of nearly* $1,500,000 *a year for the outside carpenters in Chicago, for what it believed to be ultimately beneficial, not only to union carpenters, but to many thousands of non-union workers.* It is utterly absurd to suggest that the manufacturers,

"by offer of reward," *induced* the union to do what they had been struggling and sacrificing to do for a quarter of a century.

In the absence, then, of any scrap of evidence whatsoever in support of the charge, and in view of the uncontradicted, positive evidence of both Government and defendant witnesses to the contrary, it may be taken as established that the Government wholly failed to prove that part of the indictment which charges that before April 18, 1918, the manufacturer defendants employed about 3,500 inside carpenters in their factories, *many of whom were not members of the union;* and that on the above date, *by offering to employ thereafter as such inside men, only union carpenters, the manufacturers induced the union and its members to refuse to install in buildings in Chicago any material which should be sold, shipped and delivered to builders here by certain concerns located in other states; and that the union accepted the offer made by the manufacturers, and both groups thereafter "conducted themselves accordingly."*

Also, that part of the indictment was wholly without proof which recited that all of the defendants *"well knew all of the circumstances and premises as aforesaid, and intended to bring about the above mentioned result of said unlawful conspiracy to restrain said interstate trade in the way above described."*

The attorneys for the Government recognized this total lack of evidence to prove the specific facts charged in the indictment, and shifted their position entirely from that announced in their opening statement, and from the position stated by Judge Carpenter in overruling the demurrer. Before the trial was over, the attention was entirely shifted from negotiations between the manufacturers and the union, to negotiations between the *manu-*

facturers and the *contractors.* The Government attorneys took the position in their final argument that *it made no difference whether or not the Government had proved the alleged agreement between the manufacturers and the union;* that it was sufficient to sustain the indictment if the evidence showed that, subsequent to the refusal of union carpenters to install non-union material, the interstate trade for the Paine Lumber Company and two or three other concerns, was substantially less than it had previously been!

The union respondents respectfully submit that the indictment charges them with having entered into an unlawful conspiracy with the manufacturer defendants, *and describes that conspiracy and the circumstances under which it was entered into and consummated, in detail.* They made their preparation to defend themselves upon the charge in the indictment, and no other. Opening statements were made and evidence heard and witnesses cross-examined, on the supposition that the defendants were on trial solely on the charge in the indictment.

Let the indictment be examined to ascertain what material facts are left in it if all matters are stricken out, to sustain which, there was absolutely no evidence whatsoever.

There remains practically nothing but formal allegations and conclusions of the pleader, and *there remains not one single, material allegation of fact charged against the union defendants.*

It results, therefore, that there was a total lack of evidence to sustain the charges in the indictment.

But this did not disturb the Government attorneys for a moment. They said, "We are not trying the indictment"; and argued that since the market in Chicago for non-union trim was lessened by the refusal of union car-

penters to install it, resulting in a reduction in the amount of non-union material shipped to Chicago by certain out of state concerns, therefore the Sherman Law had been violated, and the defendants were guilty of the conspiracy charged in the indictment. They said the union defendants were guilty (and in fact, all the members of the union), *because they refused to install this non-union material*; that the contractors were guilty *because they made an agreement with the union which left the union free to refuse to install it*, and that the manufacturers were guilty *because they urged the contractors to make that agreement with the union.*

This theory was adopted by the trial court in the charge to the jury, and on such instructions, there was nothing in the world for the jury to do but to return a verdict of guilty.

The Government's whole case boils down to this policy of the union. This is the ultimate object of the attack. Charge of conspiracy against the manufacturers were all resolved, in the trial, to a charge *that a committee of the manufacturers urged the contractors to yield to the union* in this matter, and to sign a Working Agreement *which did not obligate the union* to install non-union trim.

The contractors were blamed, in the end, for letting the union get its hands "untied"; nothing more.

And the union was denounced as the chief culprit, because it insisted on getting "untied," and in proceeding to carry out its policy, adopted 25 years ago.

The evidence is undisputed and conclusive that the union adopted and carried out its policy on its own initiative; without being influenced thereto by any other person; without the slightest reference to, or intent to aid the manufacturers; and with the sole purpose to im-

prove the working conditions of carpenters, and to strengthen the union.

So great was their desire to carry out this policy, which they believed would benefit, not only themselves, but all non-union carpenters in factories, that the outside carpenters in Chicago were willing to sacrifice more than a million dollars a year in wages, to gain the freedom to do so.

It was argued that this policy of the union "built a wall around Chicago"; "fostered a monopoly in building materials"; "deprived the public of the benefits of free competition"; "increased the cost of building," and otherwise "oppressed the public."

The union does not fix the price of material. There were 150 Chicago factories, *in competition with each other and with hundreds of other union factories near Chicago.* If all of these manufacturers took advantage of this policy of the union to charge exorbitant prices (which seems highly improbable), the union is not to blame. It is not required to forego lawful conduct for its own benefit, simply because someone else may utilize a situation so created, for selfish or unlawful purposes.

It may be true that a factory which employs women and boys at wages as low as 8 cents an hour, as is shown in the evidence in this case, can undersell factories that pay a living wage. It does not follow that union carpenters in Chicago "oppress the public" by refusing to install their material.

Undoubtedly the employment of children in mines, mills and factories results in lower prices to consumers, and, probably, in greater profits to the employers. It is probable that laws forbidding such employment of little children result in higher prices to the public, and possibly

in increased profits to those concerns which had not previously employed children.

But no enlightened man of today will argue that the public is being "oppressed" because of higher prices which are due to laws forbidding child labor.

Of course the cost of building would be less if carpenters worked for any wages and on any terms offered. If workmen get high wages, the public pays more for their product than if wages were low. But is that a sufficient reason to deny them the right to ask higher wages? And to strike, if necessary, to get them, Or to adopt any other lawful policy for their own benefit?

The union carpenters stated the terms upon which they would work. *They worked for one and all on those terms, without favor or discrimination.* There were 150 factories in Chicago, 240 in Illinois, and more than 1,000 in the country, manufacturing material which the union would install. *And there was not the slightest obstruction to prevent hundreds of others from entering the field. Neither was there anything whatever to prevent an unlimited number of non-union carpenters from installing non-union trim.*

In this situation, the union defendants say it is ridiculous to charge them with fostering a monopoly, or oppressing the public, or participating in a criminal conspiracy in restraint of interstate trade, because they refused to install non-union trim.

The Goverment insists the union men had an unlawful purpose to restrain interstate trade, and that such a purpose taints their acts with criminality. No such purpose is revealed in the record; but quite clearly is set forth a purpose both lawful and commendable.

Astonishing and unbelievable as it may seem, the policy of the union to refuse to install non-union trim is shot through with altruism. What was its purpose and spirit? Why did the "outside" carpenters (of whom there were four times as many as "inside" carpenters), refuse an offer of more than a million dollars a year increase in wages, if they would surrender this policy? Of course they believed the policy would help the organization as a whole; but the chief beneficiaries were not the outside carpenters who sacrificed the higher wages; *the chief beneficiaries were inside carpenters, both union and non-union.*

The outside carpenters were thinking beyond themselves, and beyond their day. They were thinking of workers in *all* mills, and were paying the price to aid them to a larger and better life. They were thinking of a far day when no factory would employ "boys and girls and pregnant women at 8 cents an hour," in the manufacture of building trim. To hasten that day, these men were willing to pay their scot,—only a million dollars a year.

Respectfully it is submitted that the petition for writ of certiorari should be denied.

HOPE THOMPSON,
Attorney for the Union Respondents.

OCT 2 19
WM. R. STAN

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1925.

No. [redacted]212

UNITED STATES OF AMERICA,
Petitioner,

vs.

WILLIAM F. BRIMS, ET AL.,
Respondents.

ANSWER OF RESPONDENTS VON PLATEN & DICK CO., CHICAGO SASH, DOOR & BLIND MFG. CO., MELROSE MILL CO., WILLIAM MORRIS & SONS COMPANY, UNION INTERIOR FINISH CO., PHILIP RINN CO., JAMES A. DICK, EWALD DIERSSEN, LOUIS HARING AND H. D. TRAEGER, TO PETITION FOR CERTIORARI AND BRIEF IN SUPPORT THEREOF.

ROBERT W. CHILDS,
ALBERT FINK,
Attorneys for above named Respondents.

GUNTHORP-WARREN PRINTING COMPANY, CHICAGO.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1925.

No. 719

UNITED STATES OF AMERICA,
Petitioner,

vs.

WILLIAM F. BRIMS, ET AL.,
Respondents.

ANSWER OF RESPONDENTS VON PLATEN & DICK CO., CHICAGO SASH, DOOR & BLIND MFG. CO., MELROSE MILL CO., WILLIAM MORRIS & SONS COMPANY, UNION INTERIOR FINISH CO., PHILIP RINN CO., JAMES A. DICK, EWALD DIERSSEN, LOUIS HARING AND H. D. TRAEGER, TO PETITION FOR CERTIORARI AND BRIEF IN SUPPORT THEREOF.

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1925

THE GUNTHORP-WARREN PRINTING COMPANY

CHICAGO

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1925.

No. 719

UNITED STATES OF AMERICA,
Petitioner,

vs.

WILLIAM F. BRIMS, ET AL.,
Respondents.

ANSWER OF RESPONDENTS VON PLATEN & DICK CO., CHICAGO SASH, DOOR & BLIND MFG. CO., MELROSE MILL CO., WILLIAM MORRIS & SONS COMPANY, UNION INTERIOR FINISH CO., PHILIP RINN CO., JAMES A. DICK, EWALD DIERSSEN, LOUIS HARING AND H. D. TRAEGER, TO PETITION FOR CERTIORARI AND BRIEF IN SUPPORT THEREOF

(The answer will be under the captions employed by petitioner.)

Respondents, Von Platen & Dick Co., Chicago Sash, Door & Blind Mfg. Co., Melrose Mill Co., William Morris & Sons Company, Union Interior Finish Co., Philip Rinn Co., James A. Dick, Ewald Dierssen, Louis Haring, and H. D. Traeger, in answer to the petition respectfully submit—

The Question Involved:

It seems to be conceded (Pet., pp. 2 and 3) to be one of fact. Does the evidence show an agreement whereby union defendants could not be compelled to work upon nonunion made mill work, as found by the Circuit Court of Appeals, or does it show an agreement to exclude all foreign made material from the Chicago market, as erroneously claimed by petitioner?

This confession should obviate the necessity of proceeding further. Surely the writ does not issue *merely to review facts.* However—

Reasons for the Issuance of the Writ:

Three are assigned:

> 1. *The channels of interstate trade should be kept open.* (Pet., p. 10.)

A proposition never denied, and recognized and approved in the decision sought to be reviewed.

> 2. *It is essential this Court say whether there may be combinations which are labor contracts in form, but contracts in restraint of interstate trade in fact.* (Pet., p. 11.)

A question so often answered by this Court that another pronouncement in the negative would seem hardly necessary.

> 3. *The Circuit Court of Appeals "gravely erred" in applying the principles announced in the Coronado Coal and Leather Workers cases, as to the effect of purpose and intent.* (Pet., p. 11.)

But it is admitted this depends upon whether the Circuit Court of Appeals found the facts correctly. If so, it is conceded their decision is in harmony with the two cases cited.

These are all the reasons assigned as to why the writ should issue. Of course it is at least more probable that the judgment of the Circuit Court of Appeals as to the facts established by the evidence is correct, than the contrary contention of the prosecution. Nevertheless, if the Court is now prepared to grant the writ when a defeated litigant thinks a Circuit Court of Appeals has misapprehended evidence, such is the instant case. But it can hardly be said to present a *"question of controversy between two or more courts of appeal,"* or *"between courts of appeal and courts of a state,"* or *"affecting the interests of this nation in its internal or external relations."*

If the foregoing views are sound, the matter is at an end. If not, it becomes necessary to refer to—

The Facts:

The salient facts as disclosed by the uncontradicted testimony and legitimate inferences may be briefly stated as follows:

1. The constitution and by-laws of the United Brotherhood of Carpenters and Joiners of America forbade its members from working upon or erecting any material which did not bear the Union label. The purpose was to better conditions, secure higher wages, and increase the membership. (R. 281.)

2. From February, 1901, until April, 1918, as each new working agreement was negotiated, an effort was made by the United Brotherhood to enforce their policy of refusing to install material which did not bear the Union label. (R. 284.) In 1915 the carpenters struck for three months to secure this end. During this strike all building operations ceased, resulting in heavy loss to contractors and millmen. But the contractors won, and the provision of Section 3, Article III, providing "There

will be no restriction against the use of any manufactured material, *except prison made,*" was again incorporated in the working agreement. (R. 524.)

3. During negotiations between the contractors and the carpenters for the new working agreement of 1918, the carpenters again insisted on changing the old provision so as to enable them to refuse to install material which did not bear the Union label, and threatened to strike if their demands were refused.

4. At the time the contractors were negotiating their working agreement with the carpenters, a committee of the Contractors' Association was soliciting a committee of the millmen for the correction of certain trade abuses and the allowance of a trade discount. (R. 526.)

5. The committee of millmen, fearing the result of the threatened strike, offered the committee of the Carpenter Contractors to recommend to the Millmen's Association the trade discount and the correction of the alleged trade abuses solicited by the Contractors' Committee, if the Contractors' Committee would recommend to its association the acceptance of the then demands of the United Brotherhood with reference to the change in Section 3 of Article III *if this became necessary to avoid a strike and the consequent tie-up of the industry.* (R. 535.)

6. In making this offer the members of the Millmen's Committee were not impelled by any consideration of keeping nonunion or foreign made material out of the Chicago market. Nothing was said in the conference upon this subject, and it formed no part of the motive which induced any of the millmen to agree to recommend it to their association. (R. 538.)

7. The inducing cause or motive which impelled the members of the Millmen's Committee to make this offer was to avoid a strike, which would result in shutting down the mills. None of the members of the Millmen's Committee had any purpose, desire or motive to impede, interrupt or obstruct interstate trade or commerce in any way. (R. 538.)

8. This offer was accepted by the Contractors' Committee, and each committee thereupon made the recommendations to its respective association which it had agreed with the other committee to do. But the Contractors' Association refused to accept the offer of the Millmen's Committee (R. 209, 238, 239) and the Millmen's Association refused to allow the trade discount as recommended by its committee. Thus *the recommendations of these two committees were rejected by each of their respective associations.*

9. The contractors finally, under pressure of threatened strike, agreed to a change of Section 3 of Article III.

10. The intent and purpose of the United Brotherhood in insisting upon the change in Section 3 of Article III was, as stated in the language of its president, Mr. Brims—

> "Because the members of our own organization were manufacturing that material, and by refusing to handle nonunion made material we would create a demand for union made material, thereby building up our organization and inducing more manufacturers to hire or employ union men. By hiring and employing union men, it would make a stronger organization, whereby we could improve the conditions of our trade and our membership; also for the having of collective bargaining." (R. 450.)

11. The intent and purpose of the contractors in yielding to the demands of the United Brotherhood was to avoid a strike.

12. The intent and purpose of the members of the committee of the millmen in agreeing to make the recommendation to their association (*which was declined by the association when made*) was to avoid a strike and the consequent closing of the mills.

13. There was no intent or purpose upon the part of either the contractors or the millmen to exclude any foreign made material, whether union or nonunion, and neither millmen nor contractors *believed*

they would be financially benefited by any such exclusion.

14. The effect of the change of Section 3 of Article III in the agreement between the Contractors and the Union, and the consequent refusal of the Union to install material not bearing its label, was to lessen the trade for Chicago consumption of two of the foreign nonunion manufacturers, and increase the trade of foreign union manufacturers.

15. There were two classes of mill work consumed in Chicago,—special and standard. (R. 515.) Of the total mill work consumed in Chicago, about 70 per cent is special, and 30 per cent standard. (R. 517.) There was not and never had been competition between local and foreign mills for the special mill work. It was all manufactured in Chicago, because the foreign mills could not give the same service as to measurement and delivery of material when wanted on the job. (R. 521.)

16. Of the standard mill work consumed in Chicago, 65 per cent was manufactured locally, 35 per cent by concerns outside of Chicago, which were both union and nonunion. The total of the standard mill work manufactured by foreign concerns did not vary appreciably during the years 1917 to 1921 inclusive. (R. 517.)

17. There was no competition between the local and foreign mills as to the standard material, since 75 per cent of the 35 per cent of the standard material manufactured outside of Chicago was sold to the *local Chicago mills* (R. 521), and the foreign mills refused as a matter of policy to sell to scalpers or lumber yards (R. 365). Thus the relations which existed between the local mills and the foreign mills as to standard material were those of wholesalers and retailers, *and not those of competitors.*

18. In the State of Illinois outside of the City of Chicago, there were in the year 1918 about 300 union mills. (R. 454.) In the states around Illinois and within a short distance of Chicago there were over 100 other union mills, as well as a number of nonunion mills. (R. 625.)

19. During the time mentioned in the indictment as the period during which the conspiracy therein charged was in force and effect, the union mills located outside the State of Illinois shipped the same proportion of the total mill work consumed in the City of Chicago as had theretofore been jointly sold and shipped by the foreign union and nonunion mills.

20. During the entire period covered by the indictment, the 150 local mills in Chicago were in active competition with each other for the Chicago trade. There was and had been no combination between them to fix and maintain prices, divide territory, limit supply, or obstruct competition.

21. After the change in Section 3 of Article III the local millmen continued to buy from foreign manufacturers, and the trade of the foreign union manufacturers continued to flow into Chicago in increased volume, and the whole effect of the change was merely to shift a portion of the theretofore foreign trade from nonunion to union manufacturers.

The foregoing are all the salient facts as established by the record. They make quite a different case from that stated in the indictment.

The Errors of Fact in the Petition and Brief in Support Thereof:

As may be seen by reference to the citations, there is no evidence to support the following facts asserted in the petition and brief in support thereof:

1. That there was an intent or desire to exclude foreign made material. (Pet., p. 3.)

2. That there was any advantage to either contractors or millmen in so doing. (Pet., p. 3.)

3. That local manufacture was expected to or did increase after the carpenters refused to install nonunion made material. (Pet., p. 3.)

4. That there were preferred prices. (Pet., p. 3.)

5. That there was relation between the increase in the wages of union labor and the change in Article III. (Pet., p. 4.)

6. That the Manufacturers' Association had to do with the change in Article III. Pet., p. 7.)

On the contrary they were opposed to it.

7. That there were negotiations between the Union and the Manufacturers' Association with reference to the change in Article III. (Pet., p. 7.)

8. That out of the negotiations sprang the agreement by the manufacturers to grant to the contractors a discount of 15 per cent. (Pet., p. 8.)

The contrary is the case. The millmen refused to allow the discount which their committee agreed to recommend.

9. That the working agreement between the contractors and carpenters sprang out of negotiations between contractors and millmen. (Pet., p. 8.)

10. That the agreement between millmen and carpenters sprang from negotiations between millmen and contractors. (Pet., p. 8.)

11. That there was an oral understanding between millmen and carpenters that no nonunion made material would be installed. (Pet., p. 8.)

12. That there were benefits from the change in Article III to contractors or millmen. (Pet., p. 8.)

13. That interstate commerce in mill work was decreased after the change, or was replaced by mill work manufactured in Chicago by millmen defendants. (Pet., p. 10.)

It remained the same, merely shifting from nonunion to foreign union mills.

14. That after the change products of millmen were sold to customers subject to large promised preferential discounts, or to others at greatly enhanced prices. (Pet., p. 10.)

15. That there was anticipated financial and industrial advantage to millmen. (Pet., p. 10.)

> On the contrary they were opposed to change of Article III, as they were not equipped to manufacture standard material.

16. That millmen promised contractors to share benefits. (Pet., p. 10.)

> There were no benefits to share, neither were any anticipated.

17. That promises by millmen were the moving and direct cause of the contractors' agreeing to the change in Article III. (Pet., p. 10.)

> The Millmen's Committee agreed to recommend the discount, not to give it. Their recommendation was rejected by their association,—a fact well known to the contractors.

18. That millmen or contractors induced the carpenters to refuse to install nonunion made mill work. (Pet., p. 10.)

> The millmen had nothing to do with the matter, were opposed to a change in Article III, and the contractors fought to the last ditch.

19. That there had been tremendously high rents and a pronounced shortage of proper structures to house the inhabitants in Chicago. (Pet., p. 11.)

20. That the effect of the conspiracy alleged in the indictment resulted in substantial interference with shipments in interstate commerce. (Pet., p. 11.)

> There was no conspiracy either as alleged or otherwise, nor did the change in Article III have any effect, so far as the evidence discloses, on interstate commerce, other than to lessen the shipments of *two foreign nonunion concerns* for local consumption in Chicago, at the same time increasing *pro tanto* the trade of foreign union shops.

The remaining errors of fact are but repetitions of those already enumerated.

Ground of Jurisdiction:

For the reasons assigned in *U. S.* v. *Sanger*, 144 U. S. 310, 36 L. 445, and *U. S.* v. *Dickinson*, 213 U. S. 95, 53 L. 711, it is doubtful if Congress intended to permit the prosecution a review by certiorari of a decision of a Circuit Court of Appeals reversing a conviction in a criminal case; also, if a construction sustaining the right, would not be repugnant to the constitutional prohibition against double jeopardy. As, however, there are so many other controlling reasons why the writ should be denied, the question will not be discussed.

Statement of the Case:

Already considered under the caption of Facts.

Errors Intended to Be Urged:

Confessedly misapprehension of evidence.

ARGUMENT.

I.

"The proven intent and purpose of these conspirators was to illegally restrain interstate trade in mill work, within the meaning of Sec. 1 of the Sherman Act, as charged in the indictment."

The whole argument consists merely in the assertion of facts not sustained by the evidence.

II.

"The common intent and purpose of these defendants to interfere with and control commerce, made effective by agreement by means local in character, surely support the allegations of the indictment."

First it is proved by the Coronado Coal and Leather Workers cases that there may be a violation of the act if conduct otherwise unobjectionable is accompanied with a wrongful intent,—a proposition denied by no one since the Standard Oil and Tobacco Cases.

It is then assumed that the evidence showed the guilty intent. But this is the point in dispute. So a case of "grave error" is made out against the Circuit Court of Appeals by assumption of the truth of the premises of fact denied by that Court,—the precise premise of fact this Court is asked to review.

Next it is said that the jury found the proof sufficient. This is advanced to cast doubt upon the accuracy of the conclusions of the Circuit Court of Appeals as to facts. The argument is, the Circuit Court of Appeals is in error because the jury found the contrary.

There might be some force in the argument if it was true in point of fact; but such is not the case. The jury did not find defendants with an intent to restrain interstate trade. The jury was not permitted to pass on this question.

The Court was requested to charge the jury that such intent was necessary before a conviction could be had. (R. 614.) The Court declined to grant the request, and at the special instance of the prosecution charged the exact opposite,—

> "Nor is it necessary for the Government to prove that a defendant intended by his actions * * * to restrain interstate commerce." (R. 604.)

Nor was this all. The jury was also charged that effect was conclusive of intent. (R. 604.) They were told that if the effect of the refusl of the United Brotherhood to install nonunion made material was to lessen the trade for local Chicago consumption of any foreign manufacturer, the statute was violated no matter what the intent of the defendants may have been.

Thus was—*effect*,—made the sole and exclusive test of conviction, and the question of intent completely withdrawn from the jury.

And upon the closing argument to the jury, Mr. Fowler for the prosecution,—in reply to the argument of the defense that intent to restrain interstate commerce was necessary under the particular facts of this case,—said:

> "Now, Mr. Rinn said that what he did was for the purpose of preventing a strike. Well I don't care whether it was to prevent a strike or not. *That would be just as unlawful* so far as that is concerned, *and I think the Court will tell you that*, and it does not make any difference if they knew what the *effect*

would be, and every man who had any sense knew that.

"If you believe Mr. Rinn, you have no doubt of his guilt. Now keep in your minds that if the commerce of the Paine Lumber Co. *was interfered with*, the law was violated." (R. 587.)

Of course there was nothing else for the jury to do but bring in a verdict of guilty; and this argument, reenforced as it was by the instructions from the Court, was among the many errors complained of in the Circuit Court of Appeals and not examined, because that Court saw fit to reverse for utter failure of evidence.

And so the prosecution having won the verdict of the jury by arguing, and inducing the Court to instruct, that the intent with which the acts were done was wholly immaterial to guilt or innocence, can hardly now be heard to say that the decision of the Circuit Court of Appeals is erroneous because though the proven conduct may have been unobjectionable, if done without wrongful intent, it was in fact criminal *because of the existence of such wrongful intent.*

Such use of opposites can hardly be justified.

The remaining portion of the argument under this caption, after careful study is unintelligible. It seems, however, to conclude with the original proposition, namely, that the Circuit Court of Appeals misapprehended the evidence.

The rule announced by Mr. Justice Story as to variance is not contested, but its application is not observed.

The indictment here described the conspiracy as an offer by the millmen to employ only union carpenters, if the United Brotherhood would refuse to install any foreign made material, and an acceptance of this offer by the United Brotherhood.

Surely this was the "*substance of the matter*" as that term is used by Mr. Justice Story, and it was upon this theory that the prosecution set out to try the case; for in the opening statement to the jury, Mr. Howe, for the prosecution, said:

> "The evidence will show that this material was referred to * * * as *outside material*. The agreement itself had the word *nonunion* inserted, and we will show to you gentlemen that all of these meetings together was to eliminate from the Chicago market *not nonunion* made material, but materials made outside of Chicago." (R. 150.)

Thus the issue was drawn not only by the indictment but by the opening statement.

But the prosecution having utterly failed to prove any such arrangement, then shifted its position and claimed it made no difference what was charged in the indictment; that defendants were guilty if the effect of the refusal to the United Brotherhood to install nonunion made material was to limit the interstate commerce for the Chicago market of any of the nonunion foreign manufacturers, and that defendants were guilty without any reference to their intent or the charge in the indictment. What the prosecution said to the jury as to intent has already been pointed out.

In reply to the argument of the defense that defendants could only be convicted for the conspiracy charged in the indictment, and not for some other or different conspiracy, Mr. Fowler, in his closing argument to the jury, said:

> "The gentleman wants you to read all of that indictment. You can read it if you want to, and I don't care. I am not going to discuss the indictment much; I am not going to discuss it any, as a matter of fact. The Court will tell you what the lawsuit is about, and the Court will define the issue, and it is

> your business to follow the direction of the Court and *not the indictment*. We are not trying the indictment, and *it is not necessary to prove everything said in the indictment*. The Court will make that perfectly clear to you." (R. 589.)

The Court at the special instance and request of the prosecution, charged the jury:

> "It is not necessary that the Government prove that the Millmen or manufacturing defendants, or any of them, and the labor union defendants * * * came to a positive understanding as to their course of conduct." (R. 603.)

That effect was conclusive evidence of purpose and intent. (R. 604.)

The Court refused to charge the jury, at the request of the defendants, that the jury could not convict *for a different conspiracy* than the one described in the indictment, or that it was necessary that the jury find a criminal intent before they could convict. (R. 614.)

Conclusion.

Because, then,—

(a) The case does not belong to the class of cases in which the writ is granted;

(b) The application is merely an attempt to secure a review of facts;

(c) Even if the writ were granted, the judgment of this Court must be the same as that of the Circuit Court of Appeals for the many other errors set forth in the assignment of errors, but not examined by the Circuit Court of Appeals,—

it is respectfully submitted that the petition should be denied.

Robert W. Childs,
Albert Fink,
Attorneys for Answering Respondents.

FILED
OCT 4 1926
WM. R. STANSBURY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926.

No. 212.

UNITED STATES OF AMERICA, PETITIONER,

v.

WILLIAM F. BRIMS, STANLEY MUSZALSKI, B. J. G. WITTMAN, ANTON SOMMERS, JAMES SMITH, JOSEPH B. FOX, F. C. BROMLEY, THOMAS F. FLYNN, W. G. SCHARDT, WILLIAM C. WHITE, DANIEL J. RYAN, JOSEPH VELTMAN, CHARLES WRIGHT, THOMAS CHURCH, HARRY JENSEN, VON PLATEN & DICK COMPANY, CHICAGO SASH, DOOR & BLIND MANUFACTURING COMPANY, MELROSE MILL COMPANY, WILLIAM MORRIS & SONS COMPANY, UNION INTERIOR FINISH COMPANY, PHILLIP RINN COMPANY, JAMES A. DICK, EWALD DIERSSEN, LOUIS HARING, and H. D. TRAEGER.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR WILLIAM F. BRIMS AND THOSE OTHER RESPONDENTS DESIGNATED IN THE RECORD AS "UNION DEFENDANTS."

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Statement of the Case.

This writ is issued in a criminal case. It brings up for review a judgment of the Circuit Court of Appeals entered June 4, 1925, for the Seventh Circuit

which reversed the judgment of the District Court of the Northern District of Illinois, Eastern Division, under which these defendants were convicted and fined under the Sherman Anti-Trust law's provision for criminal proceedings against persons conspiring to monopolize interstate trade. Imprisonment for a year and a fine of $5,000 are provided by the act. All the defendants had been fined. The fines of Brims and the other "Labor Defendants," all of whom are carpenters, ranged from $2,500 $1,000 down to $50 and costs. The rarity of the issuance of the writ in criminal cases lays additional stress and consideration to the outcome.

The trade which brought about this prosecution under the Sherman law consisted of the manufacture and sale of woodwork, such as doors and windows made in mills. There were three classes of men indicted and convicted in this case: the carpenter mechanics above referred to, mill owners, who made such products, and the "contractors," mostly, if not all, of Chicago, whose business was to erect houses in which such millwork was employed.

This extraordinary remedy is not here sought to review a decision of a judge who may not have been fully informed on the law of the case and had given perhaps a hasty judgment without stating his grounds for it.

Reasons for the judgment of reversal have been set forth at length in an opinion. These seem to have the ring of sound reasoning. We have put it in the appendix for ready reference.

The Question Involved.

In its present brief the Government has made no attempt to frame the question involved under its caption, "The Question Involved." It speaks of three "specifications of errors" (Brief, 18, 19), which we will consider later. The part of the opinion of the lower court on which the writ rests, reads (R., 470):

> "One assignment of error, based on the alleged failure of proof to support the charge, or the alleged fatal variance between allegation and proof, is, we think, well taken and makes it unnecessary to consider other questions, and facts not material to this issue will not be issued.
>
> "The indictment charged defendants with 'combining or conspiring to prevent manufacturing plants located outside of the city of Chicago and in other States than Illinois from selling and delivering their building material in and shipping the same to said city of Chicago.' The indictment thus drawn charged an interference with, an obstruction to, or a prevention of, shipments in interstate commerce.
>
> "The proof, however, disclosed merely an agreement between defendants whereby union defendants were not to work upon nonunion-made millwork."

From the above part of the opinion of the lower court, it is evidently intended the question involved herein is to be adduced.

The fatal variance referred to is that while the indictment charged a conspiracy to interfere with in-

terstate trade, the proofs showed only an agreement permitting the carpenters not to handle non-union woodwork in the City of Chicago.

This agreement, which is in writing, has no reference to where the millwork is made (R., 57). The relator, in effect, asks for a review of all the evidence and a finding that this agreement in writing on which the prosecution mainly rests was intended to bar non-union trim "made outside the City of Chicago and in other States than Illinois." The said intent must be drawn from discordant and strong adverse facts on which the lower court ruled contrary to this contention.

In the brief presented by the relator along with its petition for the writ the relator did not leave the question brought up by the writ undefined. It stated the following to be the question involved (pp., 2-3):

> *"The question presented is whether or not the record in this cause as duly filed with this petition disclosed evidence to support the above-quoted allegations of the indictment as to the offense which is charged therein against these respondents, and as to which they were found guilty by the verdict of the jury."*

If this Court should find contrary to the lower court and the text of the agreement that the said agreement was really meant to exclude the carpenter mechanics from working on trim made outside of the City of Chicago and in other States than Illinois, we would still be far, according to the said stated "question involved," from a ruling for the relator. For at the

end of the said question and to further identify it we have the words:

> "And as to which, they were found guilty by the verdict of the jury."

The Court would also have to find that fact to fully cover the "question involved." That would be a difficult fact to find, because Mr. Fowler in addressing the jury for the relator said (R., 285):

> "It is your business to follow the direction of the court and not the indictment. We are not trying the indictment and it is not necessary to prove everything said in the indictment."

So the question involved is clearly stated. It really requires a finding of fact from a great mass of evidence that the agreement does not mean what it says but was a subterfuge under which an intent to interfere with the manufacture and sale of woodwork outside of Chicago in other States than Illinois. What the jury found these men guilty of in view of the statement aforesaid of the main prosecuting counsel cannot be fathomed.

The prayer of the petition is that the judgment of the lower court be reversed. Whether the *status quo* could be restored on reversal is not considered in any other request of the prayer.

The question brought up by the writ is not sufficiently comprehensive for reversal of the judgment as a whole. Only one point is considered by the court below and it holds that this point is sufficient for its judgment, and

"*makes it unnecessary to consider other questions*" (R., 352). It might well be that if this Court should find the facts contrary to the lower court, that the "other questions" not considered by the lower court, and which, not being raised by the petition, can not be considered here, would sustain the judgment under review.

The Facts.

The statement of facts in the brief filed for the relator is so abbreviated that we deem it necessary to give a more detailed statement. We have under each point nevertheless stated a few of the main facts bearing on it.

The United Brotherhood of Carpenters and Joiners of America is a voluntary, unincorporated association having in the neighborhood of 400,000 members grouped in some 2,000 local unions throughout the United States, Dominion of Canada, and the Hawaiian Islands. At the time of the acts charged in the indictment, from 1918 to 1921, inclusive, the said United Brotherhood had a membership in Chicago of some 17,000, grouped in 37 local unions. About 3,500 of these, in seven local unions, were called "inside carpenters" because they worked in mills, factories, and shops which produced sash, doors, and other trim. The balance were called "outside carpenters," and they installed this trim and other material manufactured and fashioned by their brother members in the mills. The division of union carpenters into "inside" and "outside" carpenters was general all over the country (R., 80, 88).

The United Brotherhood was organized in 1881, has a constitution, general executive officers, traveling organizers, and maintains a systematic organization with laws, rules, regulations, and subordinate bodies having the usual officials and business agents (R., 173 to 179).

The objects of the United Brotherhood are those common and germane to other labor unions—to secure higher wages and better working conditions for its members; to pay death and disability donations; to furnish a home and pension for their aged members and wives; to improve their social and economic life, and to provide financial aid in case of accidents.

Over forty years ago the United Brotherhood adopted a label (R., 91, 93), the said label being registered under the label laws of every State, which label is affixed to or stamped upon the sash, doors, trim, and other products manufactured or fashioned by members of its own organization. For more than twenty years the constitution of the United Brotherhood has contained a provision directing or demanding that its outside membership should insist that the union label appear on all sash, doors, and other trim installed by them in buildings (R. 178).

The place of manufacture was not considered at all; in fact, there was no way a carpenter could tell where it had been manufactured. He erected it if it bore the union label (R. 196).

The purpose of the union in demanding the union label on trim they installed was stated by Government's witness Galvin as follows (R., 91): "The purpose of the union label was to better conditions and

wages in the mills, and also see if it would increase the membership, and to show that an effort was being made to bring both branches of the trade up to the same level." The purpose was also stated by defendant Brims, and his statement was not controverted or questioned throughout the entire trial. He said (R., 193):

> "Because the members of our own organization were manufacturing that material; and by refusing to handle non-union-made material we would thereby create a demand for union-made material, thus building up our organization and inducing more manufacturers to hire or employ union men. By hiring and employing union men it would make a stronger organization whereby we could improve the conditions of our trade and our membership; also for the having of collective bargaining. Never gave the matter of restraining interstate trade a thought."

The Carpenters' District Council is a sort of a *quasi* governing body of the union in Chicago and vicinity. It is composed of about one hundred delegates, elected annually by the various local unions (R., 80). Its authority is very limited, as all of its acts of any importance must be approved by a referendum vote of the membership before becoming effective (R., 91). The Carpenter Contractors' Association was composed of some five hundred of the leading contractors in Chicago (R., 56).

The working agreement between the Contractors' Association and the District Council (R., 82) had to do only with outside carpenters. The inside carpen-

ters did not vote on it; nor did the inside carpenters participate in electing the outside carpenters' arbitration board. They elected their separate board to negotiate with their employers (the manufacturers of trim), and separately voted on their working agreement. That is, each group negotiated and adopted its own working agreement without any aid, help, or interference from the other group. There were about 150 manufacturers of sash, doors, trim, etc., in Chicago (R., 196), all but two of whom employed inside union carpenters exclusively, and had done so continuously for about fifteen years (R., 199).

About thirty-seven of these manufacturers were members of Division G of the Lumbermen's Association of Chicago. This Division G had various committees one of which was the Labor Committee, which corresponded in its functions to the arbitration board of the Contractors' Association, and they negotiated working agreements triennially with the board or committee of the *inside carpenters* (R., 20-21).

In 1900 a controversy arose between the union and the contractors resulting in a lockout which lasted thirteen months (R., 92).

One of the chief points in controversy was the policy of the union set out in its constitution, that outside carpenters would not install non-union trim. The union was at last forced to yield, and a working agreement was signed which contained the following clause:

> *"There shall be no restriction in the use of any manufactured material except prison made."* (R., 92.)

By this agreement the union was obligated, contrary to its established policy, to install non-union sash, doors, and trim. As each new triennial working agreement was negotiated, the union fought to eliminate this Article 3, as it was called (Gov. Ev. R., 44, 92, 269), but was repeatedly forced to yield after strikes of longer or shorter duration. (R., 92, 241.)

The membership of the union resented this situation, and at the expiration of each agreement the various outside local unions sent communications to the District Council, urging the elimination from the next yearly agreement of Article 3, Section 3, for the reason that it "tied their hands," and prevented them from carrying out the constitutional policy of the union with regard to the installation of non-union trim. R., 92.)

In 1918 there were over 2,000 mills in the country manufacturing sash, doors, and trim which bore the union label, of which some 300 were in the State of Illinois. (R., 196.)

During 1917 the District Council sent investigators to survey working conditions in some of the non-union mills in other states, and they reported that they had found wages in some localities exceedingly low and hours long; that women and children were employed in some of the factories at wages as low as eight cents an hour. (R., 188.) Whereupon the District Council passed a resolution requesting the general officers of the Brotherhood to send organizers into those localities to persuade the employees to join the union, and to secure them more favorable wages and working conditions. (R., 188.)

In the latter part of 1917 and early in 1918 the sentiment against making another agreement which obligated outside carpenters of the organization to install non-union trim, against the long established union policy, and, as they believed, to the injury of the organization and their fellow-members, had reached the boiling point. The membership strenuously demanded that their hands be untied by the elimination of Section 3 of Article 3 from the next agreement with the Contractors' Association. (R., 92.) It was the openly avowed intention of outside carpenters, well known to the Contractors' Association, to refuse to install non-union trim as soon as they could be freed from their contract obligation to install it; and this without any regard as to whether it had been manufactured in Illinois or any other State. (R., 92.) *No objection was ever made to installing trim manufactured in other States if it bore the union label. Members of the union in Chicago contributed money and sent organizers into other States to urge the unionization of factories there.* (R., 90-91; 188.)

About the middle of 1917, the outside carpenters elected their arbitration board, and the inside carpenters elected a special committee to negotiate new working agreements, the first with the Contractors' Association, the latter with the manufacturers of trim, their respective employers.

The old agreement between the inside carpenters and the manufacturers was to expire March 31, 1918. The old agreement between the outside carpenters and the Contractors' Association was to expire May 31st, 1918.

The committee for the inside carpenters met privately and formulated a proposed new three-year agreement to present to their employers. Early in December, 1917, they met the manufacturers' committee by appointment. They took with them defendant Brims because he was then president of the District Council. (R., 189.)

Wittman, chairman of the union committee, handed to the labor committee several typewritten copies of the proposed new agreement as prepared by his committee. The manufacturers' committee said that they would go over the new agreement, submit it to their association (Division G), and would notify the union men when they were ready to discuss the matter further. (R., 189, 240.) The proposed new agreement asked for an increase in wages (the existing scale was forty-five cents), a reduction of hours from eight and a half to eight, and a half holiday on Saturday. Otherwise there was practically no change from the old agreement.

The union committee waited to hear from the manufacturers' committee, and upon notice from them, the next meeting was held about March 6, 1918, the same persons being present. Wittman, chairman of the union committee, asked for an answer to the proposition the committee had submitted at the December meeting. Mr. Rinn, for the manufacturers, replied that they did not feel that they could grant the wages asked for, which were fifty-five cents an hour for the first year, sixty cents an hour for the second year, and sixty-five cents an hour for the third year, pointing out

that on account of the Government being at war it had stopped the shipment of building materials; that some of the factories were practically at a standstill; and that business was very bad. One of the union men replied: "We must get more money; the men are leaving the shops and going into other lines of employment; laborers on the streets are receiving more than we are; the cost of living has increased over fifty per cent; potatoes, tomatoes, and all the foodstuffs that we eat have increased; our rents have gone up, our clothing is high, and if we can't get any more wages at this time we too will have to leave the shops and go into some other line of occupation." Mr. Rinn replied: "You need us and we need you. While it is true that times are hard now, we hope it won't always be this way." Brims said: "*Now, men, let us throw our cards on the table and see if we can't settle this today.*" (R., 190, 286.)

Before deciding the wage question the argument passed on to the question of the eight-hour day, and Mr. Rinn said: "Well, we knew that was coming; we saw the handwriting on the wall."

After some further discussion the manufacturers' committee retired for consultation, and on their return said: "Now, boys, this is the best proposition we can make you: fifty cents for the first year, fifty-five cents for the second year, and sixty cents for the third year."

Whereupon the union committee retired for consultation and Mr. Brims said to the committee: "Let us make them this proposition: We can see that these men are up against it because of the times, and we

cannot afford to go on a strike. Let us accept their proposition on wages provided they give us double time for Saturday afternoon."

The committee approved of this suggestion, returned to the conference, and said: "Gentlemen, if you will agree to give us double time for Saturday afternoon, we will accept your proposition." The manufacturers looked at each other; nobody said anything for a moment, and then Mr. Rinn said: "Go ahead. We will recommend this to our division and make an agreement on that basis with you, if you fellows will recommend it to your council for a referendum at the locals and pass it." (R., 190, 245-6.)

Brims replied: "You might consider the agreement fixed on that basis. We will see it goes through on that basis if you will." Rinn said: "All right; we will."

So that this agreement between the inside carpenters and their employers, the manufacturers of trim, was practically concluded on the 6th day of March, 1918, long previous to the culmination of an agreement with the Contractors' Association and the outside carpenters, and long prior to any conference with regard to Article 3, Section 3, and by a committee of the inside carpenters entirely separate and distinct from the committee who later met the Contractors' Association committee. This committee was further empowered and had already been given authority by Division G to make an agreement without referring it back to the division.

Nothing whatever was said either at the December meeting, 1917, or at this meeting, March 6, 1918, at the time the agreement was consummated about any agreement or any proposed new agreement between the Contractors' Association and the outside erecting carpenters; nothing was said in regard to the installation of either union or non-union trim or out-of-state material. Nothing was said about employing union carpenters only in the factories and mills and shops, because that had been an unquestioned custom for over fifteen years, and the paragraph in the new agreement covering the employment of union inside carpenters in the new agreement was not even mentioned or discussed but it was taken for granted by both sides. Neither had any of these matters been discussed privately between the manufacturers and the representatives of the union. (R., 190, 246.)

On April 1, 1918, a little over three weeks after entering into this agreement, the manufacturers began to operate under the terms of the agreement and continued to do so. (R., 191.)

No further conference was held nor did any communication of any kind pass between the representatives of the manufacturers and the representatives of the union from March 6th until some time in May, several weeks after the signing of the outside agreement with the Contractors' Association. On this occasion a committee from the manufacturers attended a meeting of the joint arbitration board, representing the Contractors' Association and the union, and stated

they had a considerable quantity of trim in their yards and warehouses which did not bear the union label, and they said they did not know what to do with it. Mr. Brims, on behalf of the union, suggested that a stamp be made which should read "O. K. Carpenters' District Council," and that all of this material on hand or already ordered should be stamped and would be installed by union carpenters (R., 195). Thirty-three of these stamps were made and one placed in the hands of the union steward in each shop which had such material on hand. The stewards stamped the goods on hand and returned the stamps to the District Council.

No other conference was held and no other agreement of any kind or character was made between the manufacturing defendants and the union or any of its representatives (R., 190).

We challenge the record to disclose one word of evidence that the manufacturing defendants made any offer to the union to hire union carpenters only in their factories, if the union or its members would agree not to install sash, doors, or other trim material manufactured outside of the City of Chicago or the State. Nor is there a word of evidence that any such offer was ever made. The subject was never mentioned and there is no evidence whatever that the union was ever remotely influenced by the manufacturers in its policy and conduct with regard to non-union material. All witnesses, both for the Government and the defendants, agree that no such offer was ever suggested, nor was there any discussion between the manufacturers

and the union representatives regarding Article 3, or the outside carpenters' contract, or the policy of the union regarding non-union material or out-of-town or out-of-state material.

It had been customary for more than twenty years for the union to make working agreements with the Contractors' Association, each of which ran for a three-year period.

At every such triennial period one of the principal bones of contention had been Section 3 of Article 3, which obligated outside carpenters to install non-union trim contrary to their wishes and the established policy of the organization (R., 205).

On several occasions, particularly in 1912 and 1915, the union had gone on a strike in an attempt to eliminate the offending article and section from the working agreement but had been unsuccessful. In the latter part of 1917 in response to the insistent demand on the part of the outside carpenters in the Chicago district that the new agreement *which was to go into effect on the 1st of June, 1918*, should not contain any obligation upon union carpenters to install non-union trim, the arbitration board for the union notified the contractors that in the new agreement Section 3 of Article 3 must be eliminated or substantially changed (R., 92).

The union wanted this Section 3 of Article 3 entirely eliminated because, as stated by Mr. Brims (R., 193): "It did not want to be bound down by a contract to do things that were foreign to the policy of our organi-

zation." Their reason was further stated by Government's witness Galvin (R., 92) as follows:

> "For the general benefit of their members in Chicago * * * for the benefit of the millmen (*i. e.* inside carpenters); to get a larger membership, and for better conditions in the locality where they would be organized."

The testimony of the union defendants was that in seeking to eliminate Section 3 of Article 3 from the agreement, and enforcing their union policy, they had no purpose to restrain interstate trade, or to aid the manufacturers to do so, and never gave that matter a thought (R., 194).

Sometime previous to February 23, 1918, the joint arbitration board reached an agreement providing a wage scale of eighty cents per hour and providing Section 3 of Article 3 should read as follows: "There shall be no prison-made material used" (R., 194). The contractors' board had offered to pay eighty-five cents an hour if the union would agreed to allow Section 3 of Article 3 to remain as it was in the old agreement, but this was not acceptable to the union, the proposed new agreement was sent out to a referendum vote of the outside carpenters and was carried almost unanimously. The Contractors' Association, however, rejected the agreement because of the new form of section 3 of Article 3, and sent the agreement back for further negotiations, and the joint arbitration board held another meeting on April 9, 1918 (R., 194-5).

Mr. Brims told the board: "This is going to be our last meeting; if we don't do something now we won't have any more meetings," Brims testified (R., 204), that if no agreement had been reached at this meeting, the union would have quit negotiating with the Contractors' Association, and would have proceeded to get the contractors to sign the agreement individually in the form it had been adopted by the union except that Article 3 would be eliminated (R., 204-205).

Various members of the joint arbitration board suggested modified forms to take the place of section 3 of Article 3. Respondent Ryan, secretary of the board, suggested that they take the form as it was in the union working agreement in New York. He said that they had had it there for six or eight years and found it to work out very satisfactorily to the organization; that it had just passed through the courts, and the highest court of New York had sustained it and said it was a good thing for the union (R., 194).

Ryan had there and read a certified copy of the opinion of the Court of Appeals of New York in the case of Bossert *vs.* Dhuy, 221 New York Reports, 342. The document was identified and offered in evidence but was ruled out by the court (R., 193, 20, 226, 232).

Ryan had the New York form of Article 3 and submitted it. It reads as follows:

> "That there shall be no restrictions against the use of any manufactured material except non-union and prison-made."

After some discussion, Mr. Doyle on behalf of the contractors proposed the following clause to be added to the form suggested by Mr. Ryan:

> "This shall not apply to machine-made flooring, ceiling, or ceiling partition, plain lumber, or hardware of any kind."

This was entirely acceptable to the union committee, as it left them free to carry out the union policy regarding non-union trim (R., 192). The union did not object to the clause suggested by the contractor because no union carpenters in the district or, if you please, in the United States, were employed in the manufacture of "machine-made flooring, ceiling, ceiling partition, plain lumber, or hardware of any kind" (R., 202).

According to all of the testimony both for the Government and the defendants, in all the negotiations between the representatives of the Contractors' Association and the representatives of the union nothing whatever was said by anyone about manufacturers of millwork. Nobody discussed at any time what interest the manufacturers might have in Article 3 or in the elimination of Article 3. Nor were there any discussions at any of these meetings regarding any trade discount to be given by the manufacturers to the erecting contractors.

According to the undisputed testimony the union representatives had no knowledge at any time of any negotiations between the manufacturers and the contractors; none of them were ever present at any of

their meetings and were wholly uninformed as to what took place if such meetings were held. They conducted their own affairs and their own negotiations in accordance with the laws of their own organization without any reference to or knowledge of the wishes or intent of either the manufacturers or the contractors. They testified that they were not influenced to the slightest degree by the manufacturers, *and there is not a particle of evidence to the contrary* (R., 198-199).

After June 1, 1918, the outside union carpenters, generally, in accordance with their agreement refused to install sash, doors and other trim which did not bear the union label, whether such material had been manufactured in Illinois or any other State.

THEY HAD NO MEANS OF KNOWING WHERE IT HAD BEEN MANUFACTURED (R., 199-200).

If it bore the union label they installed it without regard to, or knowledge of, where it had been manufactured (R., 92, 115).

The Government put in a large amount of evidence showing that union carpenters refused to install non-union trim *which had been manufactured in Chicago* (R., 99, 153). This certainly was not a violation of any interstate commerce laws.

The evidence further shows that after June 1st certain out-of-State manufacturers who had been selling and shipping non-union-made sash, doors, and trim to dealers in Chicago were unable to sell as much as before, the reason given by such dealers being that

union carpenters would not install non-union trim (R., 118, 138).

Other out-of-State concerns which furnished union-made trim did a much larger business in Chicago, so that *the total volume of interstate trade in such material remained about the same as before. In other words, the constant flow of trim in interstate commerce was not affected or diminished.*

It simply changed from non-union to union trim (the kind these labor defendants would erect) (R., 196, 200, 235-6, 272-4).

All witnesses agreed that the only way the union carpenters "interfered" with their business or "prevented" them from selling, buying, or using non-union trim was *by their refusal to install it.*

There is no evidence that the union used any threats, violence, coercion, or intimidation. They made no effort to prevent, obstruct, or hinder non-union carpenters or anyone else from installing any such material, by non-union men.

There was no "secondary boycott" of anyone, nor any affirmative act of any kind or character to prevent the selling or use of the banned material or to restrain the interstate trade in non-union material.

They just simply refused to work on it. This is the testimony of all the witnesses both for the Government and for the defense. And the undisputed testimony is that *their sole purpose* in refusing to install non-union material *was to better the conditions of themselves and their fellow members and to strengthen their own organization for their own economic ad-*

vantage; that they had no purpose to restrain interstate trade and "never gave it a thought."

The union is shown, by all of the testimony, to have pursued its own course, openly, without divergence, on its own initiative, uninfluenced and uncontrolled by any one, and solely for its own lawful betterment.

The Government (and other defendants than the carpenters) offered certain evidence (over the objection of the union defendants) of numerous meetings of Division G and of the Contractors' Association; of the minutes of such meetings, and of discussions which took place; of correspondence between officers and members of Division G; of conferences, negotiations, and an agreement between the representatives of the manufacturers and of the contractors relative to trade discounts, mutual co-operation, and having a clause referring to the working agreement between the contractors and the union with special reference to Article 3, Section 3. (Millmen's Exhibit 1, R., 217.)

From all the evidence it appears that in order to avoid a strike, the manufacturers' representatives urged the contractors' representatives to yield to the demand of the union to modify Article 3.

All witnesses agree that the union defendants were told nothing of these matters. The first they ever heard of them was in the trial of this case. The evidence shows that their conduct was not influenced in any way whatever by these meetings, discussions, conferences and agreements between the manufacturers and the contractors, of all of which they had no knowledge.

ARGUMENT.

I.

The specification of "errors to be urged" and the question of variance involved require a deeper and wider inquiry with uncertainty at the end than is within the province of such a writ.

The three "specifications of errors" (Relators' Brief, 18-19) require a deep and almost interminable search in the evidence. Opinions to be drawn from the mass of evidence may well differ on the points raised and there cannot be had the satisfying conviction of certainty that should leave no doubt regarding the right to the writ, which is intended to review proceedings and to restore certain justice where all other efforts would fail. Let us recall again that this is a criminal case. In such cases convictions as a rule cannot be had unless there is freedom from reasonable doubt as to guilt. Here the three "specifications of error" would almost surely leave grave doubt as to whether correct inferences would be drawn. The three are headed "Specification of Errors to be Urged," and read as follows:

1. The court below erred in holding that there was no evidence in this record which would support a finding by the jury that the agreement embodied in Article 3, section 3, was not the ultimate agreement of the parties.

2. The court below erred in failing to hold that the evidence proved a common purpose and understanding on the part of these defendants to prevent and interfere with interstate commerce in mill-work from outside the State of Illinois to the city of Chicago.

3. The court below erred in failing to hold that this common purpose and understanding on the part of these defendants, together with the use by agreement of effective means to execute the same, constituted a direct restraint on interstate commerce in said mill-work, fully supporting the indictment.

These are just mere errors, not flagrant rulings against all sense of justice and well-established declarations of law. But before speaking of them let us again revert to the "Question Involved," previously referred to herein under our heading "Statement." The "Question Involved," was framed and set forth under that heading in the relators' brief embodied in its petition for this writ. That was the question on which the writ was issued. It reads:

> "The question presented is whether or not the record in this cause, as duly filed with this petition, discloses evidence to support the above-quoted allegations of the indictment as to the offense which is charged therein against these respondents, and as to which they were found guilty by the verdict of the jury."

The quoted part, with the introduction to it, above referred to reads:

> "The indictment charged defendants with combining or conspiring to prevent manufacturing plants located outside of the '*City of*

Chicago and in other states than Illinois from selling and delivering their building material in and shipping the same to said City of Chicago.' "

Taking up Specification "1" we may ask why it is assumed that the jury found that the agreement embodying Article 3, section 3, was not the ultimate agreement of the parties, or what difference it made whether it was ultimate or not, as it is not stated whether action was taken under it, and what that action was. We find elsewhere in brief that this was not the ultimate agreement, but no statement is made as to *what the ultimate agreement was*, who made it and when and where it was made. And how can it be said the jury found section 3, etc., was not the ultimate agreement. There is a failure to suggest any action that could be taken under this undisclosed ultimate agreement.

Taking up Specification "2" we find the court below "erred" again "in failing to hold that the evidence *proved a common purpose and understanding on the part of these defendants to prevent and interfere* with interstate commerce." "Common purpose and understanding" is not the wording of the indictment.

Taking up Specification "3" we have a wording not properly defining any error on the part of the lower court as set forth in the indictment and its opinion. And there is no ground apparent to us for the reference to "effective means to execute the same."

II.

There is no basis for the inference, on which relators' case must stand, that the contract between the carpenters and contractors is not what it says, and there is an "ultimate" agreement.

The crucial clause of the written agreement reads (R., 72):

> "There shall be no restriction against the use of any manufactured material except non-union and prison-made. This shall not apply to machine-made floor, ceiling or ceiling partitions, planed lumber or timber, or hardware of any kind."

It is conceded that this clause *permits* mechanics on buildings to refuse to install non-union trim when it is offered to them while at work erecting buildings. Their prior contract gave them the right to refuse to install prison-made material, which, if made at all at the present time, is of negligible quantity.

The permission to decline to work on non-union-made material was all important to the outside carpenters because by the year 1918, when this agreement was made, the mills of the country which were unionized had greatly increased in number, as they had been doing of recent years, so there was no question that they could supply the city of Chicago with all trim required, made at union wages. As all the union mills were manned by members of the United

Brotherhood, it was to the interest of the outside carpenters, all of whom were in the same organization, to help the inside carpenters by the insertion of said Article 3. The more union millwork that was installed the better chance would inside carpenters have to obtain employment and secure its continuance. And when an outside carpenter wanted to go into a mill his chance of employment would be bettered. The organization was further strengthened by such action. Non-union mill men seeking work on buildings were another menace to the union-outside men that this agreement would tend to efface.

The sincerity of the organization in supporting the union mill men, not of Illinois or any other State but of the whole country, is shown by the maintenance of the label for use on union-made mill work.

The label is the only means by which an outside man working on a building can determine if millwork put before him for installation is union. It is the same label used all over the country. It does not have any indication on it of any city or state It is just the label bearing the name of the United Brotherhood whose members made the material on which it is pasted. The labels are all of the same design. If it had been intended to discriminate against one or more States, it would have been easy to put something on the label to indicate where it came from. It was sufficient for the outside men to know by the label that the trim was made by their own members.

This is a difficulty in the relators' case. *It is not shown how the men working on buildings could deter-*

mine where the material came from, if the agreement was not intended to only protect union material.

Again, we must note the absence of the "ultimate agreement" referred to by the relator. The lower court has said that the clause just printed was the only agreement. This clause was wrung from the contractors after efforts running over several years.

All the circumstances of the case, which we can recall, indicate that Article 3 means exactly what is says.

The report of the committee sent to investigate conditions in some non-union mills, which they found appalling, as stated, was a strong motive for these defendants not to desire to errect material made under such conditions. It was an additional incentive to require the change they secured in Article 3 to help reduce such menaces to fair work and living and the union mill men, regardless of where the non-union mill was.

Other evidence which showed action these defendants took to keep within the law, was the report of the committee sent to New York City, where the carpenters had the same agreement with their employers, that is, including Article 3. The committee also brought back the decision the carpenters of New York obtained from their Court of Appeals, their highest court, sustaining their agreement in an action brought against them by mill men. The opinion is long and unanimously rendered.

Bossert *v.* Dhuy, 221 N. Y., 342.

The committee read this opinion to the defendants' organization. The lower court at bar ruled it out.

although it bore on the purpose of the defendants. There was nothing in the report of the committee to indicate any territorial purpose with regard to the enforcement of the clause against non-union material.

There could be no uncertainty that Article 3 would be to the benefit of the members of the United Brotherhood because all the mills of the country, which are unionized, are manned by the inside members of this union. They perhaps constitute a third of the total membership through the country. All outside union carpenters are members of the same union making up the remaining two-thirds of the membership.

Self-interest of the members of the union in all respects favors the reading of Article 3 to mean exactly what it states.

It is only of recent years that the mill men had been coming into the United Brotherhood in large numbers. For many years the union consisted almost entirely of carpenters who construct buildings.

The distinction is not invariable because it often occurs that outside men work in mills, and *vice versa*. They usually work under different scales of wages, the mill men getting in most parts of the country much less wages than the outside carpenter. Both inside and outside men are governed by the same constitution of the United Brotherhood. They have the same standing in this organization and are pledged to work for the interests of each other. They are paid death, funeral and other benefits from funds of the organization to which each member contributes. The organization lives on the fees contributed by both classes.

It would seem that there was no "ultimate" agreement or any reasons for its existence. The intent, purposes and effects of Article 3 are clearly in accord with the purposes of the union and its self-interest and that of its members.

III.

Complaining mill owners of other States could do business in Chicago under the same terms as union mill men.

If there was any "interference" in their trade it was due to their desire to employ non-union men at low wages, on which their trade in Chicago probably originated and had been maintained. Because some men did not want to work upon their millwork and so foster the conditions in such mills to the detriment of their fellow union members at higher wages in union mills without any discrimination against city or State, we respectfully contend it is not a ground for prosecution under the Sherman Act. It would give such mills a preference over mills of Chicago and of other States, which pay better wages to their workmen.

Nor was there any sort of interference, except the refusal to work on non-union material, which cannot be, we contend, a cause alone of any lawful complaint.

IV.

There was no decrease in the trade from other States with Chicago.

There is no evidence of a decrease in the trade from other States. Union mills of other States had supplied the demands.

There is evidence that certain non-union mills did much less business with Chicago after the agreement went into effect. But they were not complying with the requirements as changed in the Chicago market. It cannot be expected that the law will maintain trade conditions which had formerly pleased these non-union mill men. They had been competing with union mills and did not realize or want to realize the growing conditions of the trade. They want to destroy these union mills by indirectly requiring these union outside carpenters to install their products. The defendants would interfere in no way if the non-union material was erected by non-union outside carpenters.

V.

In reversing the judgment of the lower court the statu quo would not be maintained.

From conning over the State reports we have obtained the impression that reversal under certiorari is not ordered where the *status quo* cannot be secured. We feel that the powers of this Court are so very wide under Section 240 of the Judiciary Code, with the

amendments of 1925, that we hesitate about referring to State reports on this subject.

The relator, we understand, is limited in such reports to what he asks in his prayer, which is here a reversal of the judgment of the lower court, and is limited to the questions raised on his application for the writ.

A reversal in this case would restore the judgment of the trial court and reinstate the fines imposed by that court. *Such action would deprive these defendants of the right of appeal* which they had by law from the judgment against them. That right would be absolutely swept away, and without wrong or other reason on their part for their great loss. It would be taken solely because the Appellate Court had made three alleged "specification of errors," without any question being raised of the good faith of that court.

If on the reversal a new trial should be ordered, notwithstanding the request for reversal only, it would be without precedent, so far as we have found, in any State court on such a writ. That would bring up the question of double jeopardy, which we will not consider here, as we do not expect such a ruling. But there are other questions which the opinion of the lower court refers to and which it did not consider, which may fully support the decision of the lower court. These would be lost to these defendants by a reversal.

We must again say that we consider that no inferences of fact, if the Court should consider it necessary to draw them, will leave the case where it will be felt,

beyond peradventure, that this writ would certainly right an injustice.

We respectfully ask that the writ be quashed.

Respectfully submitted,

CHARLES MAITLAND BEATTIE,
Attorney for Brims and the Other Union Respondents.

JOSEPH O. CARSON,
ROBERT R. NEVIN,
Of Counsel.

APPENDIX.

Opinion of the United States Circuit Court of Appeals for the Seventh Circuit.

June 4, 1925.

Before ALSCHULER, EVANS, and PAGE, Circuit Judges.

EVANS, *Cir. J.*:

Defendants, sixty-eight in number, were charged with a violation of Section 1 of the Sherman Anti-Trust Act. Forty-one were convicted. A new trial was granted as to several, and twenty-six joined in the prosecution of this writ of error.

The Government, for convenience sake, has classified defendants into contractor, manufacturer, and union labor defendants.

The prosecution arises out of agreements made between these several defendants, which agreements dealt with the manufacture and installation of certain building material, commonly known as mill work, and which included window and door fittings, door and window sashes, baseboards, picture moldings, cornices, book cases, panel wainscotting, etc.

The indictment alleges that in order to monopolize the business of supplying and installing building material and to secure excessive prices therefor, the defendants conspired together to prevent concerns outside of the city of Chicago and in other States than Illinois from selling and delivering their building material in, and shipping the same to, the said city of Chicago in competition with said building materials of manufacturing defendants located in Chicago.

For many years (1900 to 1918) the contractors' association and the union labor organizations had entered into agreements (usually biennial) whereby terms

of employment, hours of labor, and compensation were fixed. Each of the agreements prior to 1918 contained a clause (familiarly known as Article 3, Section 3) which read:

> "There will be no restriction on the use of any manufactured material, *except prison made*."

In 1918, this section was amended to read:

> "There shall be no restriction against the use of any manufactured material, *except non-union and prison made*. This shall not apply to machine-made flooring, ceiling or ceiling partition, plain lumber or hardware of any kind."

It was the insertion of the word "non-union" that brought about a situation which resulted in the institution of these criminal proceedings.

It appeared from the evidence that prior to 1918 a large amount of material was shipped into the city of Chicago for use therein, from Oshkosh, Wisconsin, the mill work industry being well developed in that city, and the labor therein employed being non-union. It was evidently the hope of the union organizations to force the unionizing of these non-union shops through a modification in the agreement.

The results were decisive. One company, the Morgan Sash and Door Company, of Oshkosh, Wisconsin, for the years 1910 to 1918, shipped to Chicago an average of $250,000 worth of mill work. After this agreement was made their business dropped to $61,000 in '19 and to $50,000 in '20. Many of the non-union shops in Oshkosh showed a similar decline in volume shipments into Chicago.

One assignment of error, based on the alleged failure of proof to support the charge, or the alleged fatal variance between allegation and proof, is, we think,

well taken and makes it unnecessary to consider other questions, and facts not material to this issue will not be related.

The indictment charged defendants with "combining or conspiring to prevent manufacturing plants located outside of the city of Chicago *and in other States than Illinois from selling and delivering their building material in and shipping the same to said city of Chicago.*" The indictment thus drawn charged an interference with, an obstruction to, or a prevention of, shipments in interstate commerce.

The proof, however, disclosed merely an agreement between defendants, whereby union defendants were not to work upon non-union-made millwork.

In the city of Chicago, the manufacturing defendants employed union labor. The contractors who also employed union labor could, by this agreement, purchase only union-made millwork. Otherwise the union defendants would not install it. This naturally resulted in an advance to the manufacturing defendants whose shops were unionized. Practically all of the manufacturing plants in the city of Chicago were unionized. Therefore, there was a resulting benefit to such Chicago plants.

In other words, prior to this agreement the millwork used in Chicago was supplied by the manufacturing companies in Chicago and the territory adjacent thereto. Large quantities came from Oshkosh, Wisconsin, where there were non-union shops. The Chicago shops or factories, being largely union shops, prospered under this agreement at the expense of the non-union shops in other localities.

In his opening statement to the jury, counsel for the Government said:

> "The evidence will show that this material was referred to, by this labor committee, * * * as outside material. The agreement itself had the word 'non-union' inserted, and

> we will show to you gentlemen that all of these meetings together was to eliminate from the Chicago market, *not non-union-made material, but materials made outside of Chicago.*"

Had the proof supported this promise, the case would have been similar to and controlled by the Boyle case, 259 Fed., 803. However, the Government failed to show that the real agreement was not to eliminate "non-union-made material, but materials made outside of Chicago."

Non-union-made goods were made in Illinois as well as outside of Illinois. Union-made millwork was also produced outside of Illinois, as well as in the State. In other words, demand for millwork in Chicago could be supplied from all parts of the United States. Local manufacturers and those situated in Illinois, but outside of Chicago, could supply the millwork as well as the factories of Wisconsin, Michigan, and other States. It was a matter of choice whether those factories employed non-union or union labor.

The agreement which the defendants entered into merely dealt with millwork which was the product of non-union labor. It mattered not where the millwork was produced, whether in or outside of Illinois, if it bore the union label. The restriction was not against the shipment of millwork into Illinois. It was against non-union-made millwork produced in or out of Illinois.

We find no evidence which would support a finding that the agreement embodied in Article 3 of section 3 was not the real agreement of the parties. Wherefore, we conclude there is a fatal variance and the evidence does not sustain the indictment.

The judgment is reversed, and the cause remanded for further proceedings.

Page, *C. J.*, I concur in the reversal.

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IN THE

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OCTOBER TERM, 1926.

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GUNTHORP-WARREN PRINTING COMPANY, CHICAGO.

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STATEMENT OF THE CASE.

(All italics ours; O. B. refers to Opening Brief of petitioner.)

Because the case as stated in the opening brief is

deemed wholly insufficient to convey a correct view of the record, it is believed more expeditious to restate it chronologically and in detail rather than attempt revision and supplement.

The Indictment.

Before considering the facts as established by the evidence, it may help the Court to have well in mind the theory of the indictment, the predicate upon which a general and special demurrer was overruled, and the hub of the issue as defined by the prosecution in its opening statement to the jury.

The theory of the indictment was (R. 4):

1. A purpose to exclude all foreign made material;

2. An offer by the manufacturers to employ only union men as the *quid pro quo* for a refusal of the members of the union to install *any* foreign made material;

3. An acceptance of this offer by the union;

4. A resulting

   (a) Inability of any foreign manufacturer to reach the Chicago market;

   (b) Seizure of the whole of the theretofore foreign trade by the local Chicago manufacturers;

   (c) Exorbitant or increased price to the people of Chicago;

   (d) Diminution of necessary buildings.

5. A motive to—

   (a) Monopolize the business;

   (b) Secure excessive prices.

The Demurrer.

A demurrer was interposed to the indictment upon the ground, among others, that it did not sufficiently advise the defendants of what they stood charged. Upon overruling the demurrer the court said:

> "I am not going into the details of the indictment. There is no question but what the defendants have been fully advised of what they have to meet on their day of trial. It is my opinion that the charge here, the conspiracy *inducing the organizations of labor to do certain things, is the real crux of this case*, and that in my opinion is a violation of the Sherman Act, and *that conspiracy* will have to be proved on the trial or the case will be taken from the jury." (R. 19.)

The Opening Statement.

In his opening statement to the jury, Mr. Thomas J. Howe, special assistant to the Attorney General, in defining the precise issue to be submitted to the jury, said:

> "During the negotiations for the making of this new agreement, the evidence will show, and I think show conclusively, that the millmen's association, through its labor committee, Harry Morris, George P. Rinn and Thomas Reynolds, made advances to the Contractors' Association *and to the Labor Association*, to have inserted in the new agreement about to be made, a changed Article 3, to read as follows:
>
> 'There shall be no restriction against the use of any manufactured material, except nonunion and prison-made.'
>
> * * * * *
>
> "The evidence will show that this material was referred to, by this labor committee, by the president and arbitration board of the union, as *outside material*. The agreement itself had the word *'nonunion'* inserted and we will show to you gentlemen,

that all of these meetings together was to eliminate from the Chicago market *not nonunion made material, but materials made outside of Chicago.*" (R. 20.)

The Facts.

Organized Labor.

The United Brotherhood of Carpenters and Joiners of America was organized in 1881. (R. 89.) In 1918 it had a membership of over 400,000, divided into about 2,000 locals. (R. 90.) Its membership comprised men who worked in the mills (called "inside men") and men who installed in the building (called "outside men") the material manufactured by inside men. (R. 80.)

The Brotherhood had a label known as the "union label." It was provided for in the constitution of the organization and had been in existence since shortly after 1881. It was customary to apply this label to material manufactured by inside men, which was to be erected by outside men. The constitution and by-laws of the Brotherhood forbade members of the organization from working upon or erecting *any* material which did not bear the union label. The purpose was to better conditions, secure higher wages and increase membership. (R. 91.)

In 1918 there were 31 locals in Chicago of outside men and 6 locals of inside men. These locals were organized into the District Council, a governing body of all union carpenters, both "inside" and "outside" who followed their trade in Chicago. It was composed of delegates from 37 locals, one delegate for every 200 members or fraction thereof. (R. 80.) In 1918 William Brims was president of the District Council, and the other labor de-

fendants were officers of the District Council or the locals. (R. 89.)

The Millmen.

In 1918 there were about 150 concerns in Chicago engaged in the manufacture of sash, doors and interior trim. (R. 196.) They manufactured about 75 per cent of the total mill work consumed in Chicago. (R. 236.) They were all employing union labor and operating on the closed shop principle, save two,—Nollau & Wolff, whose mills were unionized in May or June, 1918, and Anderson & Lind, who never unionized. (R. 44.) Of these 150 concerns, about 37 were organized into an association known as Division G. of the Lumbermen's Association. (R. 234.)

Out of the total membership of 37, 22 were indicted. The proportion of the sash, doors and interior trim manufactured by those indicted to those not indicted *is not disclosed by the evidence.*

The members of Division G dealt collectively with their employees. The precise arrangements entered into between the members of Division G and their employees, as to wages and conditions of labor, were evidenced by written contracts extending for periods of *three years.* The last contract prior to 1918 had been made in 1915, and expired on April 1, 1918. (R. 240.) The negotiations leading up to the execution of these contracts were conducted for members of Division G by their labor committee, composed in 1918 of Rinn, Reynolds and Morris. (R. 240.)

The Contractor Defendants.

In 1918 there were a large number of builders and building contractors in Chicago. The number does not appear in the testimony. About 500 of them were organized into an association known as the Carpenter Contractors' Association (R. 76), the primary purpose of which was to deal collectively with their employees, the outside men. (R. 76.) The arrangements as to wages and working conditions were also evidenced by written contracts entered into for periods of *three years.* In the first half of 1918 the contractors were operating under an agreement made with their employees in 1915, which expired May 31, 1918. The negotiations leading up to the execution of these agreements were conducted for the contractors by their Joint Arbitration Board,—a committee composed of five members of the contractors and five from the Brotherhood, the duty of which was to negotiate working agreements and settle disputes which might arise thereunder. (R. 75, 76.)

In 1918 D. H. Doyle was president of the Carpenter Contractors' Association, and McGimsie was vice president. (R. 206.) Scown, Wehrwein, Stressenreuter and Doherty were members of the Contractors' Association and also members of the Joint Arbitration Board. (R. 208.)

Section 3 of Article III.

Prior to 1900 the outside carpenters, in accordance with the provisions of their constitution and by-laws, *had always refused to erect material which did not bear the union label.* From February 5, 1900, to the latter part of February, 1901, there was an industrial war.

The contractors maintained a lock-out. Building operations were at a standstill. When peace was concluded and construction resumed, the contractors insisted upon the incorporation into the working agreement, as Article III thereof, eight cardinal principles, one of which, Section 3, provided: "*There will be no restriction against the use of any manufactured material except prison made.*" (R. 92.)

This provision restrained outside men from refusing to handle nonunion made material without violating their written agreement. It was in violation of the provisions of the constitution and by-laws, as well as the policy of the Brotherhood. It created much dissatisfaction among the members of the Brotherhod. (R. 92-93.)

From February, 1901, until April, 1918, this provision remained intact, *but as each new working agreement was negotiated, an effort was made by the members of the Brotherhood to secure its elimination,* so that the policy of the union of refusing to work upon material which did not bear the union label might be enforced. (R. 93.) In 1915 the carpenters went on strike for three months to enforce the elimination of this provision from the new working agreement. During this strike all building operations ceased, resulting in a loss of *many thousands of dollars* both to the contractors *and millmen,* whose shops were also closed by reason of the cessation of building operations. But the contractors won their fight and the provision was again incorporated in the working agreement for the ensuing term of three years. (R. 241.)

In the latter part of 1917 and the early part of 1918, much pressure was put by the local unions in Chicago, as well as by the general officers of the Brotherhood, upon the officers of the District Council and the labor

members of the Joint Arbitration Board, to secure the elimination of Section 3 of Article III in the new agreement, which was to be negotiated by the contractors and the members of the Brotherhood; and from the very beginning of these negotiations in the early part of Jan., 1918, Mr. Brims and his associate labor members of the Joint Arbitration Board insisted upon the elimination of Article III, or its change in such form as would permit the members of the Brotherhood to enforce the provisions of its constitution and by-laws. (R. 93.)

Competitive Conditions.

Millwork in general may be described as such articles of woodwork as, manufactured from rough lumber, enter into the construction of a building: window sashes, farmes, doors, jambs, trimmings, baseboards, chair rails, picture mouldings, cornices, china cabinets, book cases, and paneled wainscoting. It does not include such materials as flooring, ceiling, sheathing, weather boarding, timbers, which are manufactured in the sawmills by unorganized labor and shipped ready for use. (R. 234-235.)

Millwork is divided into two classes, special and standard, or stock. The standard or stock, as the name implies, includes certain items such as doors, sash, mouldings, etc., manufactured in standard sizes and of given designs and sold to the trade in the same manner as other standard articles of manufacture. Special millwork includes all millwork not stock or standard. (R. 235.)

Of the total cost of building construction in Chicago, the millwork constitutes about 6 per cent. (R. 236.) During a normal year, such as 1916 was, the total value

of the millwork consumed in Chicago amounted to about $7,000,000; the year 1917 was about 55 per cent of normal; 1918, 30 per cent; 1919, 90 per cent; 1920, 70 per cent; 1921, 110 per cent. (R. 236.) Of the total millwork consumed in Chicago during the years 1917 to 1921 inclusive, 75 per cent was manufactured by local concerns. This included *all* special millwork. Of the total millwork consumed in Chicago, about 70 per cent is special and 30 per cent standard or stock. (R. 236.)

Of the standard or stock material consumed in Chicago during the years 1917 to 1921 inclusive, 65 per cent was manufactured in Chicago, the remaining 35 per cent being manufactured by concerns located outside of Chicago. These outside concerns were both union, or closed shop, and nonunion, or open shop. The total of the standard or stock stuff manufactured by outside concerns *did not vary appreciably* during the years 1917 to 1921 inclusive. (R. 236.) During the year 1917 and the early part of 1918, there was no competition between outside mills and the local mills for the Chicago trade. The foreign mills could not give the same service as to measurements and delivery of material when wanted on the job, and therefore supplied *none of the special millwork* consumed, which comprised 70 per cent of the whole. (R. 236.)

Of the 35 per cent of the standard or stock stuff consumed in Chicago which was manufactured by the foreign mills, 75 per cent was sold *to Chicago mills themselves,* 5 or 10 per cent to builders, contractors and owners, and the balance to lumber yards. (R. 239.) In a business career of 35 years, one of the manufacturing defendants could recall only one instance in which the foreign mills had sold direct to a builder or contractor

(R. 240), and the representatives of the foreign mills who testified *for the prosecution* said that as a matter of policy *they refused to sell to scalpers or lumber yards.* (R. 146.) Thus the relations which existed between the local mills and the foreign mills as to standard or stock stuff, were those of wholesalers and retailers, *and not those of competitors.*

In Illinois, outside Chicago, there were in 1918 about 300 union mills. (R. 196.) In the states around Illinois and within short distance of Chicago, there were over 100 other union mills as well as a number of open shop mills. (R. 242.)

During the time mentioned in the indictment as the period during which the conspiracy therein charged was in force and effect, the *union mills* located outside Chicago shipped *the same proportion* of the total millwork consumed in Chicago as had theretofore been jointly sold and shipped by the outside union and nonunion mills. (R. 236.)

During the entire period covered by the indictment, the 150 local mills in Chicago were in active competition with each other for the Chicago trade. There was and had been no combination between them to fix and maintain prices, divide territory, limit supply or restrict competition.

Negotiations between the Several Committes of the Contractors, Millmen and United Brotherhood.

Early in Dec., 1917, there was a meeting between a committee of the Brotherhood composed of the labor defendants, Brims, Wittman, Somers, Smith, Muszalski and Fox, and the Labor Committee of the Millmen, de-

fendants Rinn, Reynolds and Morris, with reference to the negotiation of a new contract between the millmen and the inside carpenters, which was to become *effective on April 1*, 1918, the prior contract made in 1915, expiring on that date. (R. 240.)

Mr. Wittman, chairman of the Labor Committee, presented a copy of the proposed agreement to the Labor Committee of the Millmen, who accepted the proposed new agreement, saying they would take it back to their association, consider the matter and arrange for a meeting in the future. This is substantially all that occurred at this meeting. (R. 240.)

The proposed new agreement between the contractors and the outside carpenters, to take effect upon the expiration of the old agreement, *Apr. 30*, 1918, was first taken up in *Dec., 1917*, at a meeting of the Joint Arbitration Board which held regular monthly meetings. (R. 207.)

Doyle, president of the Contractors' Association, said that the contractors were not ready to discuss the agreement at that time, and asked that it be put off until the next month. (R. 193.)

Prior to Jan. 9, 1918, there had been several informal meetings between the Committee of the Brotherhood and a committee of the contractors, with reference to the new agreement with the outside men. In some of these meetings the representative of the Brotherhood had stated to the committee of contractors, that the Brotherhood in the new agreement would insist upon the elimination of Sec. 3 of Art. III of the old agreement, so that the members of the Brotherhood might thereafter enforce their national policy of refusing to handle nonunion made material. (R. 193-194.)

Jan. 9, 1918, there was a meeting of the Carpenter Contractors' Association. Mr. Doyle the president, stated there was nothing definite to report on the new agreement but the committees were meeting from time to time. Mr. Ashbeck moved that the eight cardinal principles or Article III of the present agreement *should remain intact.* This motion was carried. (R. 54, 55.)

Feb. 7, 1918, the proposed new outside agreement came up for consideration in a regular meeting of the Joint Arbitration Board. Mr. Doyle requested that owing to two of his members being absent, they should defer further action on the agreement until after the next meeting of his association, which was to be held on Feb. 13th. (R. 72.)

Feb. 13th there was a regular meeting of the Contractors' Association, but the minutes do not show any discussion or action upon the proposed new agreement with the outside carpenters. (R. 55.)

During the latter part of February there were several special meetings between the two committees of which no minutes were kept. In these meetings the carpenters were insisting upon the elimination of Section 3 of Article III, and for an increase in wages from 70c to 87½c per hour. (R. 193.)

The purpose of the Labor Union in insisting upon the elimination of Art. III was, as stated in the language of Mr. Brims:

> "Because the members of our own organization were manufacturing that material and by refusing to handle nonunion-made material we would create a demand for union-made material, thereby building up our organization, and induce more manufacturers to hire or employ union men. By hiring and employ-

ing union men it would make a stronger organization whereby we could improve the conditions of our trade and our membership, also for the having of collective bargaining." (R. 194.)

Some time prior to Feb. 23rd, a final agreement was reached between the two committees as to the provisions and form of the new agreement, which each committee would recommend to its respective association. (R. 194.)

This new agreement provided for a wage scale of 80c per hour and a Saturday pay day and for a change in Sec. 3 of Art. III so that in lieu of "There shall be no discrimination against any manufactured material except prison-made" it would read "There shall be no prison-made material used." (R. 194.)

In the negotiations for the elimination or change in Sec. 3 of Art. III *the contractors offered to pay 85c* an hour or an increase of 5c per hour over the old wage, if the United Brotherhood would consent to leaving Sec. 3 of Art. III in the new agreement as it had existed in the old. The members of the Brotherhood *declined to accept* this proposition, saying *they would rather have 80c an hour and a change in Art. 3*, than 85c an hour and Art. III to remain unchanged. (R. 194.)

Feb. 23rd there was a meeting of the District Council. The proposed new outside agreement providing for a wage scale of 80c an hour, a Saturday pay day and the change in Art. III as agreed upon in the Joint Arbitration Board, was presented and ratified by the District Council, and a resolution passed that it be sent to a referendum vote of the locals, the returns to be in on or before Mar. 16th. (R. 84, 85.)

Mar. 5th there was a meeting of the Millmen's Association. The Labor Committee reported that the inside

men had presented a contract calling for wages of 55c per hour for the first year and 60c per hour for the next two years, other working conditions to remain the same. A resolution was thereupon adopted that the matter "be placed in the hands of the Labor Committee without any recommendation, with the request that they make the best contract possible." (R. 23.)

Between Mar. 5th and Mar. 9th there was a second meeting between the committees of the Millmen and the United Brotherhood, with reference to the new inside agreement. The same members of the two committees were present who attended the first meeting in December. (R. 241.)

The old agreement had provided for a wage of 45c per hour, 8½ hours a day and five hours on Saturday. The proposed new agreement which had been presented at the meeting of the two committees in Dec. provided for 55c per hour for the first year, 60c for the second year and 65c for the third year, with an 8-hour day and 4 hours on Saturady. Those were the only new things being asked for. (R. 241.)

The agreement between the Millmen and their employees *did not* contain Sec. 3 of Art. III, as in the agreement between the contractors and the outside men, nor any similar provision.

Rinn said the Millmen could not pay the increase asked; that the war was on; the government had stopped the shipment of materials; that some of the mills were practically at a standstill and that business was poor. (R. 190.)

The defendant Somers said that the employees must have more money; the men were leaving the shops and

going into other lines of employment; that laborers on the street were receiving more money than they were; that the cost of living had increased over 50 per cent; that if they could not get more wages they would have to leave the shops and go into some other line of occupation. (R. 190.)

After further discussion, a final agreement was reached between the two committees providing for an increase in pay of 5c an hour for each year; an 8-hour day, 4 hours on Saturday and double time for Saturday afternoon. (R. 190.)

Each of the committees agreed to recommend the new contract as agreed upon, to their respective associations. Nothing was said as to the outside agreement which was then under negotiation between the contractors and the outside men, nor as to the proposed change in Sec. 3 of Art. III of that agreement. (R. 246, 247, 191.) Nor had either of these subjects been mentioned at the prior meeting between these two committees. *No proposition was made by the millmen to the members of the United Brotherhood to the effect that the millmen would hire only union men in their shops if the carpenters would refuse to install nonunion made material.* (R. 191.)

Mar. 9, 1918, there was a meeting of the District Council. (R. 191.)

The new proposed three-year contract which had just been agreed upon by the Millmen and United Brotherhood Committees was presented and ratified by the District Council and sent to a referendum of the locals. (R. 191.)

For *several years* prior to Jan., 1918, there had been some negotiations between the contractors and the Mill-

men with reference to the correction of certain trade abuses by the Millmen, such as the quoting of estimates to owners or architects while the building was in the hands of the general contractor, and for the securing of a trade discount from the Millmen to the contractors; but prior to 1918, nothing definite had been acomplished. (R. 213.)

In the early part of Jan., 1918, there was a meeting between the Labor Committee of the Millmen, composed of the defendants Rinn, Reynolds and Morris, and the Trade Relations Committee of the Contractors composed of Doyle, Morrice, Jeffrey, Evans, Wehrwein, McCann and McGimsie, with reference to the correction of these trade abuses and the granting of a trade discount by the Millmen to the Contractors. Nothing was accomplished at the meeting further than a general discussion of these subjects. (R. 242.)

Between Mar. 9th and Mar. 13th, and *after* the new contract between the Millmen and their employees had been agreed upon by their respective committees, and *after* it had been ratified by the District Council and sent to a referendum of the locals, there occurred a second meeting between the Labor Committee of the Millmen and the Trade Relations Committee of the Carpenter Contractors. (R. 247.)

The question of the proposed correction of trade abuses and discount was again discussed, the carpenters insisting that they should have a straight trade discount of 25 per cent with an additional 5 per cent for those who paid 85 per cent of their bills on or before the 10th of the month. The Millmen thought the discount demanded too high, and offered to recommend to their association

the correction of the trade abuses complained of, and a discount of 5 per cent and 2 per cent. (R. 247.)

Doyle stated that he wanted the discount allowed to members of *his association* only; that the effect of this would be that all contractors eventually would become members of the Association; that he was seeking in this manner to build up his membership. In this way they could better handle their collective affairs such as the making of new agreements with the Labor Unions. (R. 248.)

During the discussions as to the trade discount, Rinn asked Doyle how the contractors were getting along with reference to their outside agreement. Doyle said there was only one stumbling block—the proposed change of Sec. 3 of Art. III; that they had practically agreed upon everything else, and that the proposed new contract had been sent to a referendum vote of the local unions, but that his Association up to that time had refused to concede the change in Art. III as Mr. Brims wanted it. (R. 249.)

Rinn then asked him what he, Doyle, thought the result would be, to which Doyle replied he did not know, that they were liable to have a strike; that he thought the union was going to insist upon the change in Art. III. Rinn then said "For heaven's sake, don't bring on a condition like that again." Rinn pointed out that there had been a strike in 1915 on the same subject, during which time the industry had been idle. Rinn urged Doyle to yield to the demands of the Union in order to avoid the strike; he said he did not think that the proposed change in Art. III world make any material difference or affect things very materially; that the contractors would have to stand for the change after the strike; that

business conditions were such that in his opinion the contractors were in no position to make the fight, and would have to yield in the end. Rinn urged Doyle to make peace with the union, even if it became necessary to concede the demand for a change in Sec. 3 of Art. III in order so to do. Rinn finally said, "I will tell you what we will do,—if you will make peace with your union, even if you have to concede this change in Art. III, we will take the things you want and recommend them to our association." Doyle and his committee agreed to do this. (R. 249-250.)

At the beginning of the conference between the two committees, the contractors brought two or three typewritten sheets upon which were written the things which the contractors desired the millmen to agree to. (R. 248.)

On one of these sheets, Rinn or one of the other members of the Labor Committee, wrote in lead pencil, an additional provision as follows:

> "In your agreement with the Union, Art. III shall read 'There shall be no prison-made material used.'" (R. 250.)

This is the form in which the change in the article had at that time been agreed to by the committee of the contractors, and the committee of the Union, in the Joint Arbitration Board, and the form in which it had been embodied in the proposed new contract which had been ratified by the District Council and sent to a referendum of the locals on Feb. 23rd.

One of the members of the Labor Committee also wrote the following upon the same sheet, as a further provision of the agreement which the committees would recommend to their respective associations:

"The Contractors' Association will discourage the purchase of any millwork from lumber dealers by their members." (R. 250.)

This sheet, as corrected, was taken by Doyle or some other member of the Trade Relations Committee of the contractors, retyped and sent to the office of the Millmen's Association, where it was duly signed by Olson, the chairman of the Millmen's Association, Hooper the secretary of the Association, and Reynolds and Morris, two of the members of the Labor Committee; Rinn would also have signed it but he happened to be out of town. As rewritten and signed, this memorandum was as follows (R. 217):

"THE FOLLOWING PROPOSITIONS SUBMITTED BY THE CARPENTER CONTRACTORS' ASSOCIATION TO THE MILLMEN'S ASSOCIATION OF CHICAGO HAVE BEEN APPROVED BY THE MILLMEN:

"(1) It is requested that the Millmen will not submit estimates to owners for extra millwork while building is under charge of Contractors.

"(2) To give all members of the Carpenters Contractors Association on estimated prices a trade discount of 15 per cent and to contractors who pay eighty-five per cent of the millwork as delivered on or before the 10th of each month a cash discount of five per cent.

"(3) Estimates given to all other parties to be regular estimated prices.

"(4) Carpenter Contractors' Association will discourage the purchase of any Millwork from Lumber dealers by their members.

"(5) In your agreement with the Carpenters' District Council article 3 to read: 'There shall be no prison made material used.'

"(6) The elimination of all estimates in the sell-

ing of all Millwork to any one cheaper than has originally been quoted to contractors.

(Signed) MILLMEN'S ASSOCIATION OF CHICAGO,
EDWIN E. HOOPER, *Secretary.*
JOHN ALGOT OLSON,
H. F. MORRIS,
T. E. REYNOLDS,
Chairman of the Labor Committee."

This memorandum of agreement, upon the trial, was in the possession of the prosecution. It had been secured by the prosecution together with other files and records of the Carpenter Contractors' Association. *The prosecution did not offer it in evidence in their case in chief.* It was introduced in evidence by the Millmen defendants, as part of the cross-examination of the defendant Doyle. (R. 218.)

This written memorandum, as revised and signed, embodied the *precise stipulations* which the two committees had agreed to recommend to their respective associations. (R. 218.)

In reaching the agreement, the members of the Millmen's Committee *were not impelled by any consideration of keeping nonunion or foreign-made material out of the Chicago market;* nothing was said in the conference upon this subject. *It formed no part of the motive which induced any of the millmen to agree to recommend it to their Association.* (R. 250.)

The *inducing cause or motive* which impelled the members of the Labor Committee of the Millmen to urge Doyle to yield to the Union in their demands for a change in Art. III *was to avoid* an interruption in the building industry; and prevent a strike and tie-up which would result in shutting down the mills. None of the members

of the Millmen's Committee had *any purpose, desire, or motive, to impede, interrupt or obstruct interstate trade or commerce in any way.* (R. 251.)

Mar. 13, 1918, there was a regular meeting of Carpenter Contractors' Association. Doyle read the propositions which had been submitted to the Millmen (Mill men's Exhibit 1) (R. 218); there was a debate upon the proposed change in Art. III as agreed upon by the committee of contractors in the Joint Arbitration Board, and as accepted by the District Counsel and sent to a referendum of the locals. (R. 55.)

The Contractors' Association refused to accept the offer of the Millmen's Committee for the correction of the trade abuses and the trade discount if the Contractors' Association would yield to the demand of the Union for a change in Art. III. The records show:

> "Mr. Milford moved that Art. 3 of Sec. 3 be adopted as amended ('There shall be no prison-made material used' instead of 'There shall be no restriction upon manufactured material except prison-made.')
>
> "Mr. Brockob asked Mr. Milord to amend his motion to read to adopt Art. 3 of Sec 3 as amended and hold in abeyance until we have an agreement with the Millmen.
>
> "Motion was lost.
>
> "Mr. Doherty moved that Art. 3 of Sec. 3 be adopted as amended. Motion lost after standing vote was taken which was 35 for and 44 against.
>
> "Mr. Ashbeck moved that Art. 3 of Sec. 3 be recommended by this Association to go into the new agreement as in the old agreement. Motion carried." (R. 55, 56.)

It thus appears that the propostion agreed upon by the two committees, that is to say, the granting of the

trade discount and the correction of the trade abuses by the Millmen in consideration of the yielding by the contractors to the demands of the Unions with reference to the change in Art. III *was rejected and repudiated by the Contractors' Association.*

Mar. 14, 1918, there was a meeting of the Joint Arbitration Board "For the purpose of signing up the proposed new contract as agreed upon by the Arbitration Boards from both parties, and submitted to a vote of both organizations." (R. 72.)

After a discussion as to changes in other provisions of the new contract, the minutes recite:

> "Request of the Contractors to change Sec. 3 of Art. III to read as it now stands in the old agreement was taken up and as the proposed change in this article has been voted upon as a whole by the carpenters and carried, we are unable to change any part of same now." (R. 72.)

Mar 16, 1918, there was a meeting of the District Council. The minutes of this meeting recite—

> "The referendum vote cast on the adoption of the agreement with the outside carpenters resulted as follows: 5,063 in favor and 201 opposed." (R. 86.)

This agreement contained Sec. 3 of Art. III in the amended form "There shall be no prison-made material used."

Mar. 27, 1918, there was a special meeting of the Carpenter Contractors. (R. 69.) The Association *again refused* to accept or ratify the arrangement which had been made by their committee with the Labor Committee of the Millmen (Millmen's Exhibit 1) and which each committee had agreed to recommend to their respective associations. The minutes recite:

"Reading of the agreement (Millmen's Exhibit 1) which had been agreed upon by a committee of the Millmen's Association and a like committee of the Carpenter Contractors Assn. and after some discussion it was moved by Mr. Green that the agreement as drafted by the Committee of the Millmen's Association and the Carpenter Contractors Assn. be accepted.

"After considerable discussion it was moved and seconded that the previous motion be laid on the table.

"A rising vote was called for by the Chair and the vote stood 68 for and 3 against." (R. 69.)

The Association also again refused to agree to any change in Art. III. The minutes recite—

"Moved and seconded that we stand by our motion which was carried at a previous meeting with reference to Sec. 3 of Art. III. On a rising vote it stood 47 for and 25 against." (R. 69.)

Mar. 30, 1918, there was a meeting of the District Council. The minutes recite—

"The referendum vote cast on the adoption of the Millmen's agreement resulted as follows: 1,044 in favor and 205 against." (R. 86.)

It thus appeared from indisputable documentary evidence that the agreement between the Millmen and their employees had been fully consummated, ratified by the District Council and accepted by the locals *prior to the time* the Contractors Association had agreed to any change in Article III.

Apr. 9, 1918, there was a regular meeting of the Joint Arbitration Board. Doyle stated that the Contractors' Association had refused to consent to the proposed change in Sec. 3 of Art. III. He said this would be the

final meeting unless some adjustment of the matter could be secured. The minutes recite:

> "He was informed by Mr. Brims that this *will be* our final meeting if the proposed agreement is turned down by the Association." (R. 72.)

Article III was then discussed at length with a view of trying to get some substitute that could be agreed upon. (R. 194.) Finally Ryan, one of the Labor members and secretary of the Joint Arbitration Board suggested that the form be taken as it existed in New York; that they had had it there for six or eight years and had found it to work out very satisfactorily to the organization, that it had just passed through the courts, and the Supreme Court of New York had sustained it and said it was a good thing for the Union. This form was as follows:

> "There shall be no restriction against the use of any manufactured material except nonunion and prison-made." (R. 195.)

Doyle then suggested certain exceptions as follows:

> "This shall not apply to machine made flooring, ceiling or ceiling partition, planed lumber, timber or hardware of any kind."

Someone took the form into another room, had it typewritten on a little slip of paper and brought it back to the committee, and it was pasted on the contract that had been previously agreed upon. (R. 195.)

This slip appeared thus pasted on to the original contract introduced in evidence upon the trial. (R. 195.)

The exceptions to the provisions, of machine made flooring, ceiling, ceiling partition, planed lumber and timber and hardware, were agreed to because none of these

articles was manufactured by members of the Brotherhood but came exclusively from unorganized mills. (R. 201, 202.)

Apr. 10, 1918, there was a regular meeting of the Carpenter Contractors' Association. The Association finally adopted by a vote of 44 to 11, the change in Art. III as agreed to in the Joint Arbitration Board on Apr. 9th. (R. 56.)

Apr. 12, 1918, there was a meeting of the Joint Arbitration Board. The contractor members sought a revision of Sec. 3 of Art. III, but the Union members refusing to consent to any change, the agreement was forthwith signed. (R. 73.)

The report that the local unions had ratified and accepted the agreement with the Millmen came to the District Council on Mar. 30th. Thereupon the Council ordered the secretary to have it printed in book form and distributed among the manufacturers and members of the local unions. (R. 86, 87.)

After the meeting of the District Council on Mar. 30th, the original agreement was executed in duplicate by the Committee of the United Brotherhood, who had negotiated it with the committee of the Millmen, and transmitted by Bromley, the business agent of the District Council for the inside men, to the Millmen for their signature. The agreement became effective and went into operation on Monday morning, Apr. 1st. It was not actually signed by the committee of the Millmen until Apr. 18th. The reason for the delay does not appear.

Apr. 19th there was a meeting of the Millmen's Association. (R. 253.) The change of Art. III in the agreement between the Contractors and the outside carpen-

ters was discussed, as was also the effect upon the business of the Millmen, of the outside carpenters refusing to handle nonunion made material. All the members of the Millmen's Association, other than members of the Labor Committee, expressed themselves as being much opposed to the change which had been effected in Art. III. The Labor Committee was severely criticized for their connection with the matter. It was said that the Labor Committee should have done something to prevent the change. (R. 254.)

The question of what was to be done with large stocks of nonunion-made material on hand and in warehouses which had been purchased by the millmen was also discussed. It was suggested that the matter be taken up with the officers of the Brotherhood with a view of inducing them to install such material as had been purchased or ordered in good faith from non-union mills prior to the change in Art. III. (R. 254.)

May 7th there was a regular meeting of the Joint Arbitration Board; a committee of the Millmen appeared and requested an understanding from the members of the United Brotherhood as to the nonunion material which had been ordered and bought prior to the change in Article III. The officers of the United Brotherhood agreed to furnish a special stamp known as the O. K. stamp, to be applied to such material, and agreed that members of the United Brotherhood would install such material if it bore the O. K. stamp; the members of the Millmen's Association, however, to furnish a list of all contracts let or taken, or material bought previous to May 1, 1918, and all material then on hand and purchased under contract up to May 1, 1918. (R. 73, 74.)

Sometime prior to May 4, 1918, the memorandum

agreement between the Millmen and Contractors' committee (Millmen's Exhibit 1) was submitted to Mr. Elmer H. Adams, the regular attorney for the Millmen's Association. May 4th Mr. Adams rendered an opinion that the agreement was legal as to all the provisions except the 4th,—"The Carpenter Contractors' Association will discourage the purchase of any millwork from the lumber dealers by their members." (R. 226, 227.)

May 8, 1918, there was a regular meeting of the Contractors' Association. The memorandum agreement between the two committees (Millmen's Exhibit 1) was again discussed. The opinion of Mr. Adams as to its legality was read. It was then resolved that the agreement be accepted as drawn with the exception of Art. 4, the legality of which had been questioned by Mr. Adams. (R. 69.)

May 13, 1918, there was a meeting of the Millmen's Association. The question of the proposed discount to the carpenter contractors was discussed. Many of the members of the association were opposed to any trade discount whatever; some of them were in favor of some discount but regarded 15 per cent and 5 per cent as recommended by their committee, as being too high. *All were opposed to allowing the discount to members of the Contractors' Association only, as recommended by their committee.* At the request of Mr. Reynolds, the matter was taken out of the hands of the Labor Committee and referred to the committee on Trade Relations. (R. 36.)

May 21st there was another meeting of the Millmen's Association. The matter of the trade discount was again discussed. The Association refused to accept the recommendations of its committee that a discount of 15 per cent and 5 per cent be allowed, but instructed the

Trade Relations Committee to offer to the Carpenter Contractors a discount of 5 per cent and a further discount of 2 per cent to those who paid 85 per cent of their bills on or before the 10th of each month. (R. 37, 258; R. 550-552, T. 344-6.)

There were further meetings of the Millmen's Association on June 10th, June 24th, June 27th, Dec. 17, 1918, and Mar. 7 and 18, 1919, at which the proposed trade discount was discussed. At each of these meetings, the Association refused to follow the recommendations of the Labor Committee as to the granting of a trade discount in accordance with the memorandum agreement (Millmen's Exhibit 1) made between the two committees.

Mar. 18, 1919, there was a meeting of the Millmen's Association and a trade discount of 15 per cent and 5 per cent was allowed, not to members of the Carpenter Contractors' Association *only*, as provided in the agreement between the two Committees (Millmen's Exhibit 1), but "to all carpenter contractors in Cook County, whether members of the Carpenter Contractors' Association or not." In allowing this discount, the members of the Millmen's Association *were not influenced* by the recommendations of, or the promises made in Mar., 1918, by their Labor Committee. (R. 261, 40, 41; R. 185-6, T. 60-1.)

The effect of the extension of the discount to all contractors instead of limiting it to members of the Contractors' Association, was to render the discount of no value for the purposes for which it was desired, namely, to increase the membership and strengthen the hand of the Carpenter Contractors' Association. (R. 262.)

After May 1, 1918, the outside carpenters who were members of the United Brotherhood, refused to handle material which did not bear the Union Label or the O. K. Stamp. The effect of this refusal by the members of the United Brotherhood, was to *increase* the sale of stock or standard stuff for Chicago consumption made by foreign union mills, and to *lessen* the sale of the same material made by foreign nonunion mills. *The volume of sales of foreign made standard or stock material remained the same,—it merely shifted from nonunion to union mills.*

In 1919, some of the members of the Millmens' Association induced the Hardwood Products Company of Oshkosh, Wisconsin, which had theretofore been nonunion, to unionize its mills, agreeing to take its total supply on a cost plus 10 per cent price basis; and because of this arrangement made in 1919, the grand jury included the Hardwood Products Company and its agent Beale, among the millmen defendants in the conspiracy charged in the indictment. (R. 162.)

Capacity and profits of the Mills.

The mills operated by defendant manufacturers were of no great capacity. The largest, Wm. Morris & Sons Co., had a capacity when running full time, of only $600,000 worth of finished product per annum; the Union Interior Finish Co. $475,000; Dick & Traeger $425,000; Chicago Sash, Door & Blind Co. $375,000; balance $300,000 and under. (R. 233.) None of the mills increased their capacity during the years 1917 to 1920 except Philip Rinn Co., who built a small addition, threw out some obsolete machinery and replaced it with modern machinery at a cost of between thirty and thirty-five thousand dollars. But the improvement was not made

on account of the change in Art. 3; it had been in contemplation for some time previous. (R. 234.)

The increase in profits after the change in Art. 3, so far as the record discloses, was as follows: Rinn Co. made in 1917 a profit of $950; in 1918, $2,000; in 1919, $3,300; in 1920, $45,000; in 1921, $3,000. (R. 237.) The profits of the Union Interior Finish Co., the second largest mill, were as follows: in 1917, $19,296.29; in 1918, $1,303.68; in 1919, $15,662.40; in 1920, $54,169.03. (R. 272.) The profit or loss of the other mills does not appear in the testimony. In 1920 the price of raw material went from $60 to $240. (R. 280.) Of the increase in profits for the year 1920, 80 or 90 per cent was increased value of inventories. (R. 237.)

Motion to Direct Verdict.

Upon the foregoing facts, defendants moved the court to direct a verdict of not guilty. The motion was denied. (R. 11.)

Closing Argument.

Upon the closing argument by the prosecution, Mr. Fowler, among other things said to the jury, in speaking of the purpose of the millmen in urging Mr. Doyle and his committee to yield to the demands of the union:

> "Now Mr. Rinn says that what he did was for the purpose of preventing a strike. Well I don't care whether it was to prevent a strike or not; *that would be just as unlawful*, so far as that is concerned, *and I think the Court will tell you that*, and it does not make any difference if they knew what the *effect* would be, and every man who had any sense knew that.
>
> "If you believe Mr. Rinn you have no doubt of his guilt. Now keep that in your minds, that if

> the commerce of the Paine Company *was interfered with, the law was violated.*" (R. 285.)

Mr. Fink, on behalf of the Millmen defendants, argued at length to the jury that it was incumbent upon the part of the prosecution to prove the conspiracy described in the indictment, *and not some other or different conspiracy.* He requested the jury to examine the indictment carefully with a view of ascertaining whether or not the conspiracy proven, if any, was the same as that described. (R. 285.)

Mr. Fowler for the prosecution, in reply to this argument said:

> "The gentleman wants you to read all of that indictment. You can read it if you want to, and I don't care; I am not going to discuss the indictment much. I am not going to discuss it any as a matter of fact. The court will tell you what the lawsuit is about, and the court will define the issues, and it is your business to follow the direction of the court and not the indictment. *We are not trying the indictment,* and it is not necessary to prove everything said in the indictment. *The court will make that perfectly clear to you.*" (R. 285.)

Mr. Fink also quoted to the jury the following excerpt from the decision of the Supreme Court of the United States in the Nash case:

> "That only such contracts and combinations are within the prohibition of the Sherman Act, as by reason of intent or the inherent nature of the contemplated acts, prejudice the public interest by unduly restricting competition, or unduly obstructing the course of trade." (R. 286.)

And stated to the jury that the Court would so instruct them, and thereupon by way of argument, applied the facts to these principles of law. (R. 286.)

CHARGE OF THE COURT.

Though specially requested so to do by the defendants, the Court refused to charge the jury. (R. 296 to 305.)

1. That only such contracts and combinations are within the prohibition of the Sherman Act as by reason of intent or the inherent nature of the contemplated acts, prejudice the public interests by unduly restricting competition or unduly obstructing the course of trade. (R. 300.)

2. That it was necessary that the jury find a criminal intent before they could convict. (R. 298-299, 300.)

3. That the jury could not convict for a different conspiracy than the one described in the indictment. (R. 296.)

4. That the jury could not convict unless they found a purpose or intent to keep out of the Chicago market building material manufactured in states other than Illinois. (R. 298.)

5. That the known *effect* of certain acts is not necessarily conclusive evidence of the *purpose* with which such acts are done. (R. 298.)

6. That if the millmen's committee, in good faith, (in order to avoid tying up the industry in Chicago), offered to recommend to their association the trade discount which the contractors were seeking if the contractors committee on their part would accept Article 3 as then demanded by the labor union, the labor committee did not violate any of the provisions of the Sherman Act. (R. 301.)

7. That workmen are under no legal obligation to work on any kind of material. If they deem it to their interest to refuse to work on nonunion made material, they have a legal right to do so, and the mere fact that such material may have been made in some other state does not render such refusal unlawful nor in violation of the Sherman Act. (R. 296.)

Not only did the court refuse to give the foregoing instructions as requested, but the court in effect charged the jury that—

1. It was not necessary that the Government prove the millmen and labor defendants came to an understanding as to their course of conduct. (R. 291.)

2. If the effect of the conduct was to restrain interstate commerce, this was sufficient, and the statute was violated. (R. 291.)

3. That effect was conclusive evidence of purpose and intent. (R. 291.)

Since there was no denial that the effect of the refusal of members of the United Brotherhood to erect non-union made material was, to some extent at least, to lessen the sales of the Paine Lumber Co. in Chicago for local consumption, the court's charge, taken in connection with the statement of the learned counsel for the prosecution to the jury in his closing argument that "*if the commerce of the Paine Co. was interfered with, the law was violated,*" was the equivalent of a peremptory instruction to bring in a verdict of guilty. Applying the instructions to the evidence, *there was no possible theory upon which the jury could acquit.*

SUMMARY OF ARGUMENT.

I.

THE CONCLUSION OF THE CIRCUIT COURT OF APPEALS ON VARIANCE WAS CORRECT, BECAUSE

(a) The offense denounced by the Sherman Act cannot be charged in the language of the statute;

(b) The description of the offense must be such as to apprise the defendant of the precise conduct complained of;

(c) A conspiracy can only be described by its three elements,—scope, means and parties.

(d) There is a variance as to scope;

(e) There is a variance as to means;

(f) There is a variance as to parties;

(g) This view is sustained by authority;

(h) The contrary view, as set forth in the opening brief, cannot be sustained.

1. It avoids the question of variance;

2. The assumptions of fact cannot be sustained.

II.

THERE WAS FAILURE OF PROOF AS TO OTHER NECESSARY ALLEGATIONS OF THE INDICTMENT.

III.

THE DISTRICT COURT ERRED IN INSTRUCTING THE JURY THAT EFFECT IS CONCLUSIVE OF PURPOSE.

IV.

THE DISTRICT COURT ERRED IN INSTRUCTING THE JURY THAT AN UNDERSTANDING BETWEEN THE MILLMEN AND LABOR UNION DEFENDANTS WAS UNNECESSARY.

V.

THE DISTRICT COURT ERRED IN REFUSING TO CHARGE THE JURY CRIMINAL INTENT WAS NOT NECESSARY, AND IN REFUSING TO INSTRUCT THE OPPOSITE, BECAUSE

(a) Criminal intent is a necessary element of every crime, except certain statutory offenses which are merely *mala prohibita;*

(b) The principle applies to conspiracies generally because *mala in se;*

(c) A conspiracy to violate the Sherman Act is also an offense *mala in se;*

(d) Any other view would result in gross injustice.

VI.

THE DISTRICT COURT ERRED IN REFUSING TO CHARGE THE JURY THAT IT COULD NOT CONVICT THE DEFENDANTS FOR A CONSPIRACY OTHER THAN THE ONE DESCRIBED IN THE INDICTMENT.

VII.

THE DISTRICT COURT ERRED IN REFUSING TO CHARGE THE JURY ACCORDING TO THE DOCTRINE ANNOUNCED BY THIS COURT IN THE NASH CASE.

VIII.

THE DISTRICT COURT ERRED IN REFUSING TO INSTRUCT THE JURY THAT IF THE MILLMEN'S LABOR COMMITTEE ACTED IN GOOD FAITH MERELY IN ORDER TO AVOID A STRIKE, THEY WERE NOT GUILTY.

IX.

THE CONDUCT PROVED WAS NOT VIOLATIVE OF THE SHERMAN ACT.

X.

AS TO THE MILLMEN OTHER THAN THEIR LABOR COMMITTEE, NO THEORY OF GUILT CAN BE EVOLVED.

ARGUMENT.

I.

THE CONCLUSION OF THE COURT OF APPEALS ON VARIANCE WAS CORRECT.

Finding the indictment alleged a conspiracy to prevent all concerns in other states from selling their goods in Chicago in competition with local manufacturers, while the proof showed nothing but an agreement that the union would not be compelled to handle material not bearing its label no matter where manufactured, the Circuit Court of Appeals concluded there was a fatal variance.

It is respectfully submitted the conclusion was correct, because—

(a) *The offense denounced by the Sherman Act cannot be charged in the language of the statute.*

This is now too well settled to need argument.

U. S. v. *Cruikshank*, 92 U. S. 542, 23 L. 588.
U. S. v. *Simmons*, 96 U. S. 360, 24 L. 819.
U. S. v. *Carll*, 105 U. S. 611, 26 L. 1135.
U. S. v. *Britton*, 107 U. S. 655, 27 L. 250.
U. S. v. *Hess*, 124 U. S. 489, 31 L. 518.
Standard Oil v. *U. S.*, 221 U. S. 1, 55 L. 646.

It follows that in the consideration of the sufficiency of the indictment, the general averments couched merely in the language of the statute are to be wholly disregarded.

Since the offense cannot be described in the language

of the statute, it follows there must be *some* additional description.

(b) *The description of the offense must be such as to apprise the defendant of the precise conduct complained of.*

This is universal. The extent to which the requirement is insisted upon, as well as the fundamental reasons therefor, are sufficiently illustrated by

U. S. v. *Simmons*, 96 U. S. 360, 24 L. 819.

Defendant was indicted for knowingly and unlawfully causing and procuring to be used a still in a certain building, in violation of R. S. 3266.

The indictment was held insufficient because the defendant was not notified therein of the name of the person whom he caused and procured to use the still.

The court said:

> "It was neither impracticable nor unreasonably difficult to have done so. If the name of the person was unknown to the grand jurors, that fact should have been stated in the indictment."

U. S. v. *Cruikshank*, 92 U. S. 542, 23 L. 588.

Defendants were indicted for a conspiracy to hinder and prevent citizens of the United States in the free exercise and enjoyment of their rights and privileges, in violation of the Act of May 31, 1870.

The indictment was held bad because defendants were not notified therein of the specific right, the enjoyment of which they were said to have conspired to hinder or prevent.

The court said:

> "A crime is made up of acts and intent; and these must be set forth in the indictment with a reasonable particularity of time, place and circumstance.
>
> "The object of the indictment is, first, to furnish the accused with such a description of the charge against him as will enable him to make his defense."

U. S. v. *Carll*, 105 U. S. 611, 26 L. 1135.

Defendant was convicted of having uttered, etc., a falsely made, forged, counterfeited and altered obligation and security of the United States in violation of R. S. 5431. The instrument was set forth according to its tenor.

The indictment was held insufficient because the defendant was not informed that he knew the instrument which he was charged to have fraudulently uttered, passed, etc., was false, forged and counterfeited.
Pettibone v. *U. S.*, 148 U. S. 197, 37 L. 419.

Defendants were convicted under R. S. 5440 for conspiracy to violate R. S. 5399, providing—

> "Every person who * * * corruptly or by threats or force obstructs or impedes * * * the due administration of justice, etc., shall be punished," etc.

The indictment alleged that defendants were members of a miners' union; that a writ of injunction was duly and regularly issued by the court, directed to defendants. This writ was set out in the indictment. It enjoined defendants from interfering with the servants, agents and employees of the complainant in the injunction suit.

The indictment then averred that the defendants, while the writ was in full force and effect, did interfere

with the servants and employees by force, threats and violence, as prohibited by the injunction.

The indictment was held insufficient because, among other things, defendants were not informed—

(a) That it was their purpose to obstruct the course of justice.

(b) That they were ever served with process.

(c) That they were ever notified of the issuance of the writ or the pendency of any proceedings in the Circuit Court.

(d) That they knew justice was being administered in the court.

Batchelor v. *U. S.*, 156 U. S. 426, 39 L. 478.

Defendant was indicted for willfully misapplying funds, moneys and credits of a national bank in violation of R. S. 5209. The indictment charged—

> "Defendants, etc., did * * * as such president * * * willfully misapply $40,422.79 of the moneys funds and credits then and there belonging to, and the property of said association, in the manner following, to wit:"

The indictment then set out the specific acts relied upon as misapplication. It was held insufficient, because defendant was not notified as to who made the discounts, or loans upon the notes, or what sums were paid therefor, how the moneys obtained were applied.

The Court said:

> "Without such averments there is no sufficient description of the exact offense with which the defendant is charged so as to enable him to defend himself against it."

Moore v. *U. S.*, 160 U. S. 268, 40 L. 422.

Defendant was convicted of embezzlement of property of the United States. The indictment charged:

> "The said George S. Moore, then and there an assistant clerk or employee, etc., did embezzle the sum of $1,652.59 money of the United States," etc.

It was held bad because the property alleged to have been embezzled was not described, the general rule being that an averment of embezzlement of a certain amount of dollars and cents is insufficient to apprise the defendant of the exact offense of which he stands charged.

Keck v. *U. S.*, 172 U. S. 435, 43 L. 505.

Defendant was indicted for smuggling, in violation of R. S. 3082 making it an offense "to fraudulently or knowingly import or bring into the United States * * * any merchandise contrary to law."

The indictment charged that Keck did knowingly, willfully and unlawfully import and bring into the United States, etc., diamonds of a stated value, etc., contrary to law, etc.

It was held insufficient because it was not averred in the indictment how or in what manner he imported and brought into the United States the said merchandise.
Lockett v. *U. S.*, (C. C. A. 7th C. 1901), 107 Fed. 697.

Defendant was convicted of a violation of R. S. 5480, prohibiting the use of the mails to defraud. The indictment charged defendant

> "had devised a scheme and artifice to defraud divers other persons then residents within said United States, by inducing those persons severally to send in divers valuable articles," etc.

The defendant's fraudulent scheme was described in detail.

The indictment was held fatally defective and the judgment of conviction reversed, because defendant was not notified of the names of the persons intended to be defrauded.

Miller v. *U. S.*, (C. C. A. 7th C. 1905), 136 Fed. 581.

Defendant was convicted for a violation of R. S. 4746 providing—

> "That every person who knowingly * * * in anywise procures * * * the presentation of any false or fraudulent affidavit, etc., shall be punished," etc.

The indictment charged—

> "Defendants did knowingly and willfully procure the presentation to the Commissioner of Pensions, of a certain false and fraudulent paper writing," etc., which was set out.

The indictment was held insufficient and the judgment of conviction reversed, because the defendant was not notified of

(a) The name of the person through whom the presentation was made.

(b) The manner in which defendant procured the presentation.

The court said:

> "The indictment fails to declare the agency through which the presentation of the false affidavit was procured by the accused.
>
> "How, then, can it be said that the offense is so stated that the accused can be fully apprised of the charge which he is to meet?
>
> "He is not informed by the indictment of the man-

> ner of presentation, or the name of the person claimed by the prosecution to have been his agent in the presentation of the false affidavit, and would be obliged to go to trial without opportunity of meeting the testimony of any one of several persons whom the prosecution might produce as the agent of the accused in such presentation."

Similar authorities could be multiplied. It is believed the foregoing are sufficient to indicate what is required.

It is therefore essential there be accurate description of the precise conduct complained of.

(c) *A conspiracy can only be described by its three elements,—scope, means and parties.*

Since conspiracy is by definition a corrupt combination between two or more to do something unlawful or something lawful by unlawful means, it follows that every conspiracy is composed of only three elements,—(a) its scope, or that which is sought to be accomplished; (b) the means, when these are important; (c) the parties.

There is no other element.

If the scope or purpose is unlawful, this unlawful scope or purpose must be stated. If the scope or purpose is lawful but to be accomplished by unlawful means, the unlawful means must be stated.

So the parties, if known to the grand jury, must be stated, or there must be allegation followed by proof that defendant conspired with unknown parties.

Of course a conspiracy, the scope of which is to do X, is not proved by evidence of a conspiracy to do Y. Nor is a conspiracy to do A by means of B proved by a conspiracy to do A by *means of* C.

Neither is a conspiracy between A, B and C sustained by proof of a conspiracy between A, E and F.

(d) *There is a variance as to scope.*

The scope of the conspiracy is very clearly charged in the indictment to be the exclusion from the Chicago market of *all* foreign made material. Not only is it so charged in the indictment, but the same issue was again clearly drawn by the prosecution in its opening statement to the jury:

> "The evidence will show, and I think show conclusively, that the millmen's association through its labor committee, Morris, Rinn and Reynolds, made advances to the contractors association and the labor association, to have inserted in the new agreement about to be made, a changed Article 3 to read as follows:
>
> 'There shall be no restriction against the use of any manufactured material, except nonunion and prison made.'
>
> "The evidence will show that this material was referred to by this labor committee, by the president and arbitration board of the union, as *outside material.*
>
> "The agreement itself had the word 'nonunion' inserted and we will show to you gentlemen that all of these meetings together was to eliminate from the Chicago market, not *nonunion made material,* but materials *made outside of Chicago.*" (R. 20.)

The indictment therefore does not allege, nor was it the contention at the beginning of the case, that the conspiracy charged, as to scope, was to exclude nonunion made material, but on the contrary all material *"made outside of Chicago,"* whether union or nonunion; and the reason of excluding all, as charged, was to enable the millmen "to monopolize the business of supplying said

builders and building contractors in Chicago with such building material, and secure excessive prices for their own building material."

Of course without the exclusion of union made material as well as nonunion made material, the ultimate purpose of local monopoly and securing excessive prices became impossible. There were too many competing union millmen both inside and outside Chicago.

So the issue is very clearly drawn. The millmen are called upon to defend against an accusation that they conspired to exclude *all* outside material, and not merely *some*.

Since the proof showed merely an agreement between the contractors and the union that the latter could not be compelled to install nonunion made material, it is earnestly submitted that here was a fatal variance as to the scope of the conspiracy.

(e) *There is a variance as to means.*

The theory of the indictment is there were two groups, the local millmen and foreign manufacturers, competing for the Chicago market; that the millmen defendants had a desire and purpose to secure this market for themselves, to the exclusion of the foreign manufacturers. Such purpose and desire, if it in fact existed, was of course lawful. It was of the very essence of the competition demanded by the public policy underlying the Sherman Act. If the purpose could have been fulfilled by any legitimate means of competition, such as lower prices, better material, quicker deliveries, or more desirable service, there could have been no complaint, even though the ultimate effect would have been *to entirely*

destroy the theretofore interstate trade and commerce of the foreign manufacturers.

The gist of the complaint, therefore, against the millmen defendants is the use of *illegal means* to fulfill the lawful purpose of securing exclusively for themselves, a market theretofore shared with the foreign manufacturers. What then are the means alleged in the indictment?

The illegal means alleged are, by promising to employ only union men in the mills, the inducing of union labor to refuse to install foreign-made material.

It is charged:

> "Said manufacturer defendants on said April 18, 1918, by *offering to employ* thereafter as such 'inside men' only carpenters and joiners who were members of said organization, *induced said organization* and its members thereafter to refuse to install any of such building material in the houses and buildings in said City as should be sold by manufacturing concerns whose plants were located outside of said City of Chicago and outside of said State of Illinois to builders and building contractors in said City for shipment and delivery to, and which should be shipped and delivered to said City, which said *offer was thereupon accepted.*" (R. 4.)

These are the means *and the only means set forth,* whereby it is alleged that the *lawful purpose* of securing the whole of the Chicago trade for themselves was to be accomplished.

The gist of the conduct complained of, therefore is the offer to employ *only union* men in the mills, if the union men would refuse to install such building materials as should be sold by manufacturing concerns whose plants

were located outside the City of Chicago, and the *acceptance* of this offer by the union defendants.

It was for this precise reason the demurrer was overruled. The District Court said:

> "There is no question but what the defendants have been fully advised as to what they have to meet on their day of trial. It is my opinion that the charge here, the conspiracy,—*inducing the organizations of labor to do certain things*—is the real crux of this case, and that in my opinion is a violation of the Sherman Act, and *that conspiracy* will have to be proved on the trial, *or the case will be taken from the jury.*" (R. 19.)

It was therefore incumbent upon the prosecution to prove that the millmen defendants *induced* the organizations of labor to do certain things—in other words, that the millmen *made the offer* charged in the indictment, and that this offer was *accepted* by the union.

But not a scintilla of proof was presented to sustain the only means alleged,—that such offer was made by the millmen or accepted by the union. Nor was a single fact presented from which either the offer or its acceptance could be inferred.

What is now apparently sought to be substituted as the equivalent of the offer and its acceptance is an agreement by the labor committee of the millmen to recommend to their association the granting of a trade discount to the contractors, if the latter would accede to the demands of the union.

But surely this does not even remotely approach the illegal means described in the indictment. Hence there is a fatal variance as to means.

(f) *There is a variance as to the parties.*

The indictment charged the millmen as the conspirators, alleging the union and contractor defendants to have been merely aiders and abetters, the theory being that the millmen, desiring to secure all the Chicago local market for themselves, conspired with each other to bring about this result by the unlawful means of inducing the members of the United Brotherhood to refuse to install foreign made material. But the conduct proved, and that ultimately complained of by the prosecution, is the agreement between the trades relation committee of the contractors and the labor committee of the millmen.

But the parties to this agreement are in no sense the same as the parties to the conspiracy charged in the indictment, and so here too is a fatal variance as to parties.

(g) *This view is sustained by authority.*

It is believed a brief consideration of some of the leading authorities upon the law of variance as applied to indictments for conspiracy will be of assistance.

Rex v. *Pollman, et al.*, 2 Campbell 229, was an indictment for conspiracy to obtain a sum of money as a consideration for securing an appointment to be made by the Lord's Commissioners of the Treasury, which appointment was to be procured "*through the medium of Mrs. Harvey.*"

The evidence showed that the existence of Mrs. Harvey was unknown to one of the conspirators, the defendant Watson, and the argument was made that it was not necessary to prove that each of the defendants had *cognizance of the means alleged,* whereby the purpose of the conspiracy was to be carried into effect, and that the

defendant Watson being engaged with the other conspirators to gain the same end, *had adopted the means* by which the end was to be accomplished.

But as to the variance between the proof and the means alleged, Lord Ellenborough held:

> "When the conspiracy is charged, it must be charged true. You must prove that all the defendants were cognizant of the *object of the conspiracy* and the mode stated in the indictment by which it was to be carried into effect. *A contrary doctrine would be extremely dangerous.*"

Commonwealth v. *Harley* (Mass.), 7 Mete. 506.

The indictment charged a conspiracy to defraud A. The proof showed a conspiracy to defraud the public generally. The Court held the variance fatal, saying:

> "It is well settled that the Government must prove every statement that enters into the substance of the charge and becomes a material averment. In the present case it was undoubtedly competent to have charged a conspiracy to cheat and defraud the public generally. But here the allegation is not of an intention to defraud the public generally, but to defraud A.
>
> "The question is, therefore, whether evidence of a conspiracy by defendants to cheat the public generally, or any person who might fall in their way and thus be made to suffer from the conspiracy, will support an indictment charging the special and particular purpose of the conspiracy to have been to defraud A.
>
> "The Government having elected to set forth in the indictment a special intent to defraud A *as the object of the conspiracy*, that allegation was a material one, and the Government was bound to establish it in the proof. But that allegation could not be established by proof that the defendants conspired and agreed together to cheat the public gen-

erally or any individual whom they might be able to defraud."

To the same effect is *Commonwealth* v. *Kellogg* (Mass.) 7 Cushing 473, where the indictment charged a conspiracy to defraud the H Fire Insurance Co. by removing goods from insured's property and pretending that it had been lost by fire. The evidence showed that defendant did not know he was insured in the H Company but believed he was insured in the W Company, and that it was the W Company he intended to defraud, *but the indictment charged the H Company.* In holding the variance fatal the court said:

"The object of the conspiracy must be shown by the proof to correspond with that charged in the indictment. It becomes a material allegation when it points to a particular individual or corporate body, naming them as the subjects of the conspiracy, and a variance between the allegation and the proof in such case is fatal.

"In an indictment for a conspiracy, the criminal offense is the act of conspiring together to do some criminal act or to effect some object, not in itself criminal, by criminal means. The gist of the offense being the conspiracy, the purpose of the conspiracy should be truly stated.

"A charge of conspiracy in the form of this indictment, that is, alleging the original purpose to have been to defraud the H Insurance Company, cannot be supported by proving a conspiracy with a general intent to defraud, and then proving the further fact, that after the acts of removing the goods and concealing the same, and after a fire had destroyed the store, the defendant Kellogg, upon hearing that there was an insurance by the H Company, falsely, represented that the goods had been destroyed by fire."

In *State* v. *Hadley*, 54 N. H. 224, the indictment set out a conspiracy to charge B with having made a felonious

assault upon H with intent to ravish. The proof showed a conspiracy to charge B with having seduced and committed the crime of adultery with H. This was held a fatal variance, the court saying:

> "Descriptive averments cannot be rejected, but must be proved as alleged. In this case *the gist of the offense is the conspiracy*, and that must be proved or the indictment fails.
>
> "The evidence tended to show that there was a conspiracy, but not to do the thing charged. The offense which they were charged with conspiring to commit, and the one which they were proven to have conspired to commit, are entirely different, and that being a material averment, must be proved as laid.
>
> "The conspiracy was charged to be for *one purpose*, and the proof to be *for another*. That is a variance in a material averment."

In *Schayer* v. *People* (Colo), 37 Pac. 43, the indictment charged a conspiracy to defraud B by means of making a false report of defendant's wealth to Dun & Company, so that B would extend credit. The proof showed that when the report was made, defendant did not know of B. This was held a fatal variance. The court said:

> "But in this indictment, the obtaining of B's goods is inseparably connected with a design to defraud *this particular individual*. This alleged original design of the defendant pervades the whole indictment, and if everything that relates to it should be stricken out, there would be no offense charged."

In *Rabens* v. *United States* (C. C. A. 4th C.) 146 Fed. 978, the indictment charged a conspiracy to rob the post office at Latta. The evidence showed a *general conspiracy* to rob, but there was no evidence connecting the plan with the robbing of *the Latta post office*. This was held a fatal variance, the court saying:

"The District attorney could undoubtedly have charged a general conspiracy to rob. However, he did not see fit to do so, but elected to rely on a count charging a conspiracy which is restricted to one transaction. It was therefore incumbent that he should satisfy the jury that plaintiff in error entered into a conspiracy with intent to rob the post office *at Latta* as alleged."

In *State* v. *Tramwell*, 24 N. C. 380, the indictment charged the object of the conspiracy to be to cheat and defraud the citizens at large, or particular individuals, out of their land entries. The proof showed a conspiracy between the entry maker and the other defendants to falsely and fraudulently make entries before the books were thrown open to the general public, in order that they might secure the prior right to preempt the public land. It was held a fatal variance because not the conspiracy charged.

In *Evans* v. *People*, 90 Ill. 384, the indictment charged a conspiracy to defraud one Eddy by false pretenses. It did not appear that Eddy was known to two of the three conspirators. The court held the variance fatal, saying:

"In order to obtain a conviction for the conspiracy, the *object of the conspiracy* must be proved *as laid in* the indictment."

In *Lowell* v. *People*, 229 Ill. 227, 82 N. E. 226, the indictment charged a conspiracy to defraud one Jackson by false pretenses by means of writing worthless fire insurance. The proof showed that when the agreement between the defendants was made, Jackson was unknown to them. In holding the variance fatal, the court said:

"It cannot be said that the allegations of a conspiracy with the intent to cheat and defraud Jackson are sustained by proof of an intent to cheat and defraud the public generally. In criminal cases it

> is not sufficient to sustain a conviction on a particular charge to prove that the defendant was guilty of some other charge, or of general bad or criminal conduct, but the proof must show his guilt of the particular charge set forth in the indictment."

The rule of variance is well recognized by this Court. It is characterized as "a principal of *universal* application, both in proceedings at law and in chancery, that the proofs must correspond with the allegations."

> *Jones* v. *Moorehad*, 1 Wall. 155, 17 L. Ed. 662.
> *Providence Rubber Co.* v. *Goodyear*, 9 Wall. 788, 19 L. Ed. 566.
> *Nash* v. *Towne*, 5 Wall. 689, 18 L. Ed. 527.

So also it has been repeatedly held:

> "It is a *positive* rule of criminal procedure that the accused shall not be charged with one crime and convicted of another."
> *Coffin* v. *U. S.* 156 U. S. 432, 39 L. 481.
> *U. S.* v. *Northway*, 120 U. S. 327, 30 L. 664.

The rule has even been extended to admiralty, where the technical niceties required in criminal procedure are much relaxed.

Thus in *The Schooner Hoppet* v. *U. S.* 7 Cranch 390, 3 L. 380, Chief Justice Marshall said:

> "It is not contended that all those technical niceties which are unimportant in themselves and standing only on precedents, of which the reason cannot be discerned, should be transplanted from the courts of common law into the courts of admiralty.
>
> "But a rule so essential to justice and fair proceeding as that which requires a substantial statement of the offense upon which the prosecution is founded must be the rule of every court *where jus-*

tice is the object, and cannot be satisfied by a general reference to the provisions of a statute.

"The rule that a man shall not be charged with one crime and convicted of another, may sometimes cover real guilt, but its observance *is essential* to the preservation of innocence. The reasons of this rule are, first, that the party accused may know against what charge to direct his defense, second, that the court may see with judicial eyes that the fact alleged to have been committed is an offense against the laws, and may also discern the punishment annexed by the law to the specific offense.

"These reasons apply to prosecutions in courts of admiralty with as much force as to prosecutions in other courts. It is therefore a maxim of the civil law that a decree must be *secundum allegata* as well as *secundum probata. It would seem to be a maxim essential to the due administration of justice in all courts.*"

It may be that when a plurality of purpose is alleged, it will be sufficient to prove one of the purposes set forth.

It may be that where several *means* are alleged, it will be sufficient to prove one of the means set forth.

It may be that where certain persons are described as conspirators, it will be sufficient if some of them are proven to have been implicated.

But what will be said of a case—

(a) Where a *single* scope or purpose—to exclude *all* foreign made material—is alleged, and the proof shows a different scope or purpose—a refusal to handle only *nonunion made material;*

(b) Where a *single* means is alleged—an agreement between millmen and the United Brotherhood —and an entirely different means is proved—an agreement between a committee of millmen and a committee of contractors;

(c) Where the parties are charged to be the mill-

men and labor unions, and the proof shows a committee of millmen and a committee of contractors,—

in other words, where there is a variance as to *every element* of the offense.

The sixth amendment to the Constitution provides that in all criminal prosecutions, the accused shall be informed of the nature and cause of the accusation. It is earnestly submitted that to hold such variance immaterial, is to establish the doctrine that a man may be accused of one offense and convicted of another.

(h) *The contrary view as set forth in the opening brief cannot be sustained.*

The theory of the opening brief seems to be that, though there was in fact no

(a) Offer by the millmen to employ only members of the Brotherhood *as the consideration* of the union's refusing to handle material not bearing their label;

(b) Acceptance of such offer by the union;

(c) Contemplated exclusion of *all* foreign made material, as distinguished from mere refusal to handle *nonunion made material*,—

all as alleged in the indictment, that nevertheless because the evidence establishes that—

(a) The millmen planned to increase their own profits by the exclusion of nonunion made material;

(b) The contractors were induced to enter into the scheme by promise of a trade discount;

(c) The union was induced to enter into the scheme by promise of an increase in wages,

and because such conduct, by reason of the unlawful *intent* involved, was violative of the statute, *therefore* the

conclusion of the Circuit Court of Appeals was erroneous.

To this argument there are two principal answers,—first, it avoids the issue of variance; and second, the assumptions of fact cannot be sustained.

1. *It avoids the issue of variance.*

Assuming arguendo, the record supported the theory of fact as outlined in the opening brief, and also that such conduct was violative of the act, it does not follow that the conclusion of the Circuit Court of Appeals was erroneous.

The picture now presented by the assumed facts is quite different from that set up in the indictment. It is a case of alleging a violation of the act by one course of conduct, and attempting to prove violation by another. It is as if one alleged a violation by conduct A, B and C, and attempted to sustain the allegation with proof of conduct D, E and F. It is on principle, as if an allegation of violation of the act by a combination to control prices by means of an agreement among competitors, was sought to be sustained by proof of the exclusion of competitors by illegal means.

The opening brief contains no argument to sustain the claim that the admitted variance between the indictment and the proof is not fatal. All that is said upon this subject is, an immaterial variance is not fatal; this is an immaterial variance; hence not fatal. (O. B. 41.)

And so the situation resolves itself into this: One course of conduct is alleged; a demurrer is overruled because the conduct alleged is considered violative of

the act; a different course of conduct is proved on the trial also violative of the act, (admitted arguendo only)—and it is then said there is no variance because the difference between the conduct alleged and that proved is not material.

But no reason is assigned as to why the variance is to be regarded as immaterial. No argument is advanced to sustain the claim. It is not shown why the matter involved is not descriptive of the offense. No measure or test is suggested by which it may be determined when such matter is and when it is not descriptive of the offense charged. No authorities dealing with this question are cited or discussed. It is merely asserted to be immaterial.

The same might be said of any variance so long as it might happen to appear from the evidence that a defendant was guilty of some similar offense. But this is not law, as shown by the authorities already cited, which deal with variance as applied to *conspiracy cases.*

For all the reasons already given, both upon principle and authority, it is respectfully submitted that allegations as to scope, means and parties,—since they are the only elements—must necessarily be descriptive of the offense of conspiracy, and must be proven substantially as laid.

2. *The assumptions of fact cannot be sustained on the record.*

The picture now claimed to be presented by the record necessitates establishing the following important facts:

1. The scheme originated with the millmen;

2. The millmen induced the union to insist upon the change in Art. 3;

3. The inducing cause was the promise of higher wages;

4. The millmen induced the contractors to yield to the demands of the union;

5. The inducing cause was the promise of the trade discount;

6. The millmen were not motivated by fear of a strike.

For without these facts a situation is presented quite different from that claimed.

The only dispute then, of fact, between the prosecution and the defendants seems to be, the question of intent; the Government claiming as above set forth; the labor defendants claiming they were actuated only by a national policy which had existed for many years; the contractors insisting they yielded only because they were forced to do so; and the labor committee of the millmen maintaining they sought only to avert an industrial contest they were in no position to win.

It remains to examine the manner in which the Government seeks to sustain its claim of fact. It is not asserted there is direct evidence; no one testified to the facts as claimed. All the direct testimony was to the contrary. It is claimed the intent, purpose and motive asserted by the Government is established by legitimate inferences from proven circumstances. These circumstances are enumerated in the opening brief.

The Government claims these circumstances in combination sustain its theory of fact. The defendants insist that they are as consistent with their claims as to intent, as with that of the prosecution. The court's attention

is therefore invited to a consideration of each of these enumerated circumstances as it bears on the question of intent.

1. *Art. 3 as adopted contemplates outside carpenters would not install nonunion made material.* (O. B. 21.)

This was the avowed policy of the union, set forth in terms in its constitution and by-laws. So many cases have been before this court involving the same thing, that it is believed the court will now take judicial knowledge of the fact that labor organizations have been struggling towards this end for more than half a century. On intent it seems to sustain the claim of defendants rather than that of the Government.

2. *The labor committee of the millmen solicited and offered to subsidize the contractors to yield to the carpenters.* (O. B. 21.)

The fact is not accurately stated. The labor committee in no sense solicited; it was the contractors who solicited a trade discount in order to drive all other contractors into their own organization. The labor committee at first declined to recommend the discount, though negotiations were even then on between the contractors and the union as to a change in Art. 3.

Neither did the labor committee offer the subsidy. They merely agreed to *recommend* the trade discount to their association. They gave no guarantee their recommendation would be accepted.

But even as stated, the circumstance is as consistent with one theory as the other, except that it seems more probable the members of the labor committee were actu-

ated by fear of a loss that was imminent and certain, than hope of gain which was contingent, distant and doubtful.

3. *This subsidy was predicated upon the anticipated exclusion of nonunion made material.* (O. B. 22.)

This states the fact as if the discount was given. This is not the case. It was refused. It was not only refused, but the labor committee was much criticized by its own association for not having insisted that Art. 3 remain unchanged. Every member of Division G, with the exception of Rinn, was opposed to changing Art. 3 and so expressed himself. Rinn was indifferent. (R. 254 *et seq.*)

Nor is there any evidence that the subsidy was predicated upon the anticipated exclusion of nonunion made material in the sense that this was the reason the labor committee agreed to the discount. On the contrary the undisputed direct testimony is, that the agreement to recommend was made only to induce the contractors to yield to the carpenters so as to avoid a strike.

4. *Doyle told Brims there were certain pending disputes with the manufacturers upon which their contract with the outside union was dependent.* (O. B. 22.)

The circumstance is not truly stated. All the evidence to sustain comes from a minute of a meeting of the Joint Arbitration Board Jan. 3, 1918. (Govt. Ex. 42, R. 71.) This minute recites:

> "Mr. Doyle stated that they were unable to get together with the mill and lumber people to settle some other disputes."

The words appearing in the opening brief, "*upon*

which their contract with the outside union was dependent", have been added to this minute without warrant from the evidence. There is nothing in the minute which even suggests that the contracts were interdependent.

Nevertheless it is from this circumstance, not as it exists in the evidence, but as expanded, that the following inferences are drawn:

(a) The only dispute could be one involving concessions by the millmen to the contractors;

(b) Brims knew what the dispute was, else he would have inquired;

These inferences would not be legitimate even if the minute were as claimed. Obviously are they fallacious in view of the minute as it exists.

5. *The secretary of the union wrote the general secretary Jan. 23, 1918, he was informed the manufacturers would not negotiate the new contract until after the agreement with the outside carpenters had been signed.* (O. B. 24.)

It proves only the secretary of the union was misinformed. There had been a meeting and negotiations early in Dec., 1917, at which the inside carpenters had presented their claims. (R. 240.) Mar. 5th there was a meeting of Division G at which these claims were presented and the matter was placed in the hands of the labor committee, with the request that they make the best contract possible. (R. 23.) There was another meeting between Mar. 5th and Mar. 9th (R. 241) at which a final agreement was reached. (R. 190.) Mar. 9th there was a meeting of the District Council which ratified and accepted the proposed new agreement and sent it to a referendum of the locals. (R. 191.) By Mar. 30th the

agreement had been adopted by the locals by a vote of 1,044 to 205. (R. 86.) The agreement between the contractors and the outside carpenters was not concluded until Apr. 12th. (R. 73.)

It follows that the secretary was misinformed. The agreement had not only been negotiated but fully ratified twelve days *before* the agreement with the outside carpenters had been signed.

The evidence does not show from whom the secretary of the union received the information mentioned in his letter of Jan. 23rd, nor what was said in this connection. The circumstance, trifling in any event, becomes wholly insignificant in view of the recorded facts.

6. *The promise of the preferential discount was in consideration of the contractors' withdrawing their objections to the change in Art.* 3. (O. B. 24.)

There was no promise; there was merely an agreement to recommend. The recommendation was rejected. When a discount was allowed the next year May 1, 1919, it was expressly extended to all contractors in Cook County, whether members of the Contractors' Association or not. Since contractors were the only customers of the mills, this was equivalent to allowing a discount to none. (R. 262.) Even had there been a promise, it may as well have been made to avert the strike as to restrain interstate commerce.

7. *Immediately after the tender of the subsidy the contractors agreed to the change in Art.* 3. (O. B. 24.)

This is not true in point of fact. The meeting between the labor committee of the millmen and the trades relation committee of the contractors, at which the labor

committee agreed to recommend the trade discount, occurred between Mar. 9th and Mar. 13th, *and after the new contract between the millmen and their employees had been agreed upon by their respective committees, and after it had been ratified by the district council and sent to a referendum of the locals.* (R. 247.)

The contractors did not yield to the union until *thirty days later.* During this time, Mar. 9th to Apr. 12th, the contractors association on Mar. 13th refused to accept the offer of the millmen's committee to recommend the trade discount to their association if the contractors would yield to the demands of the union for a change in Art. 3. (R. 55.)

Mar. 27th the contractors association again refused to accept or ratify the arrangement which had been made by their committee with the labor committee of the millmen (R. 69), and refused to agree to any change in Art. 3; and it was not until Apr. 10th that the contractors finally agreed to the change in Art. 3. (R. 56.) And even in the meeting of the Joint Arbitration Board on Apr. 12th, the contractor members again sought to reopen the subject. (R. 73.)

The circumstance is therefore not accurately described by saying that immediately after the tender of the subsidy the contractors agreed to the change in Art. 3. But even if the circumstance were truly stated, it is as consistent with the one claim as the other.

8. *Rinn was advised in Jan.,* 1918, *of the union's intention to refuse to install nonunion made material.* (O. B. 24.)

The same question had been agitated triennially for fifteen years. It was a matter vitally affecting his busi-

ness. Pray why should he not have been advised? Where lies the significance?

9. *There was an atmosphere of conciliation between the millmen and the union.* (O. B. 25.)

It is perhaps the first time that negotiations in a spirit of conciliation have been suggested as badges of crime.

10. *The inside carpenters received concessions from the millmen though their business was unsatisfactory.* (O. B. 25.)

It might have been more unsatisfactory if the concessions had not been granted. The concessions apparently did not amount to much. There was only an increase of five cents an hour, an eight hour day, four hours on Saturday and double time for Saturday afternoon, though the cost of living had increased fifty per cent, and men were being compelled to leave the shops and go into other lines of occupation. (R. 190.)

Concessions by manufacturers to their employees, for reasons other than a purpose to violate the Sherman Act, are not unusual. Such might as well have been the case here, as the contrary.

So did the union receive increased wages from the contractors in addition to the change in Art. 3; and it is significant that the contractors offered their carpenters five cents an hour more if they would withdraw their demand for a change in Art. 3. This offer was declined. (R. 149.)

And so the government's argument amounts to this: 14,000 outside men gave up five cents an hour in order to create a condition where 3,500 inside carpenters might

increase their earnings five cents an hour, and all for the ultimate purpose of enabling the millmen to enrich themselves by restraining interstate commerce. The suggestion would at least seem highly improbable.

11. *The concessions from the millmen to the carpenters were based upon the adoption of Art.* 3. (O. B. 25.)

There is no evidence to sustain the fact as stated. The citation apparently refers to a conclusion of Mr. Doyle's on cross-examination, where he said:

> "I knew no more about what was the real causes for the change in Article 3 than any of the rest of the members. I did not know that the millmen had absolutely nothing to do with it. It was my private opinion that they had something to do with it. I could not tell the jury *in what way* the millmen had anything to do with the change in Article 3. I thought they had something to do with it because it was connected with their business and it was the foundation of a raise in wages of their employees." (R. 221.)

In what respect, or why or how it was the foundation of a raise in wages of their employees, Mr. Doyle did not know. The fact that Doyle testified to a vague conclusion which he thought he had reached five years before, to the effect that the change in Art. 3 was the foundation of a raise in wages of the inside carpenters, can hardly justify the assumption that the increase in wages was based upon the adoption of Art. 3 as demanded by the union,—particularly when the increase had been agreed to before the contractors had agreed to any change in Art. 3, and when Doyle was unable to recall any reasons for his conclusions.

And even if the circumstances as stated be taken as literally true, its is immaterial to the point in issue; for

even if the increase in wages was based wholly upon the theory there would be a change in Art. 3 and a consequent increase in profits for the millmen, *non constat* the labor committee of the millmen were motivated in their agreement to recommend the trade discount by any considertion other than what they claim, namely to avert a strike.

12. *The agreement between the millmen and carpenters was not consummated until after the agreement between the contractors and outside carpenters.* (O. B. 25.)

This has already been shown to be error. The agreement between the millmen and their employees was ratified by the district council Mar. 9th, confirmed by the locals prior to Mar. 30th, and actually put into active operation on Apr. 1st. The agreement between the contractors and outside carpenters was not concluded until Apr. 12th.

And even were the fact as stated in the opening brief, the circumstance is of very minor importance. Many reasons readily suggest themselves as to why the agreement between the millmen and the carpenters might not have been consummated until after the agreement between the contractors and the carpenters, other than a purpose upon the part of the millmen to commit crime.

13. *Doyle testified the increase in wages to the inside carpenters was founded upon an expected increase in the business of the manufacturers by reason of the change in Art.* 3. (O. B. 26.)

This is mere repetition of No. 11,—"The concessions from the millmen to the carpenters were based upon the

adoption of Art. 3." It is based upon the same excerpt from the record, and no other. (O. B. 26.)

14. *Division G appointed a committee to check material delivered for buildings in Chicago.* (O. B. 26.)

From this the Government deduces a purpose of ascertaining whether the outside carpenter were "in good faith complying with an agreement not to install."

But this argument assumes the existence of an agreement not to install. There was no such agreement, nor evidence upon which it can be predicated. The only evidence as to the reason for the appointment of this committee is that of the witness Rinn. (R. 257.) He says it was to see if the union was in fact installing nonunion made material. If so, the members of his association could continue to use such material as they had done before.

Under Art. 3 the union might install nonunion made material or not, as it pleased. Of course it was of interest to the millmen to ascertain if the union was enforcing its policy as to some, and relaxing it as to others. *This is sometimes done.* It would have been manifestly unfair if some favored contractors were being permitted to use nonunion made material, while a like privilege was denied to others. The suggested check-up was a matter of necessity.

Since the purpose as explained seems neither unreasonable nor improbable, is supported by the oath of a credible witness, and impeached by neither human testimony nor legitimate inference, no reason is observed for inferring a different purpose,—particularly the one deduced by the Government.

15. *It was understood before the outside agreement was signed, nonunion material on hand or ordered would be installed.* (O. B. 27.)

It was the proper thing to do in any event. It would have been manifestly unfair for the union to suddenly refuse to install, leaving millmen and contractors with large stocks of nonunion made material on hand. The circumstance proves merely that the union, in enforcing its policy, was at least in some respects fair and reasonable.

But in any event, surely the circumstance has no bearing upon the question now under investigation.

16. *Brims told Anderson he was expected to organize his business as a union concern.* (O. B. 28.)

There was now a reason for the observation. In former years the union had been prevented, by reason of the prohibition contained in Art. 3, from refusing to install nonunion made material. It could not therefore have refused to install the material manufactured by Anderson upon this ground. The situation had now changed. The union might refuse to install nonunion made material if it so desired.

17. *Brims told Anderson if cheap out of town stuff could be kept out, it would result in better prices to the Chicago mills and better wages to the inside carpenters.* (O. B. 28.)

An argument of Brims (in an effort to induce Anderson to unionize his mill) as to the possible effect of the enforcement of the union policy, can hardly be made a controlling factor in changing Brims' purpose from

an honest effort to better the condition of all members of his Brotherhood to a criminal intent to unduly restrain interstate commerce. At best the statement exhibits Brim's conception of results, not his intent, purpose and motive. As to these he testified quite definitely. (R. 193.)

In any event it throws no light on the intent of the millmen.

18. *All defendants knew the effect of refusal to install nonunion made material upon commerce from Wisconsin and the southern states.* (O. B. 29.)

This is undoubtedly true; and if *effect* is the only factor in the equation, and real intent, purpose, motive, competitive conditions, degree of restraint, directness or indirectness of operation on interstate commerce, etc. are to be disregarded, defendants are all guilty.

So would they have been had the demands of the union been rejected and a strike declared. The result then would have been to stop all building; the *effect* an interference with the flow of both union and nonunion made material *from all states.*

19. *In* 1917 *some manufacturers said they would prefer to manufacture the material in Chicago if it were possible to come anywhere near the prices at which they buy.* (O. B. 32.)

The evidence does not disclose who these manufacturers were. Assume arguendo they were some of the defendants. Any manufacturer would like to increase his business, *non constat* he would permit such desire to lead him into a scheme involving criminal liability.

20. *The union desired nonunion mills organized so as to eliminate competition with nonunion made material.* (O. B. 32.)

It is not observed how this advances the argument for the Government. It would seem rather to sustain the claim of the defendants that the union itself was wholly responsible for the situation complained of.

21. *Doyle testified the manufacturers claimed business was too bad to grant a preferential discount, and by getting this Art. 3 released they might be able to negotiate the discount on those mills.* (O. B. 32.)

What Doyle said was:

> "The millmen made a claim that they were not able to pay a discount when we asked for one, because business had been so bad, and by getting this Article 3 released they might be able to negotiate the discount on those mills (bills?). *That was at the meeting in June.* I do not know of any contractor who got a trade discount from them." (R. 209.)

The Government apparently construes this to mean that the *millmen* had said, "By getting this Art. 3 released they might be able to negotiate the discount on those mills."

But the record is not susceptible of this construction. The statement was not made until June, long after all agreements had been consummated. The contractors were now trying to get the discount. The millmen were refusing to give it. Doyle says *none of them got it.*

Under these circumstances the more reasonable construction is that the statement, "By getting this Art. 3 released they might be able to negotiate the discount on those mills" came from the contractors as an argu-

ment for granting the discount, and not from the millmen who were refusing it.

22. *Doyle testified, "When they (the manufacturers) said that because of Art. 3 they had been benefited and might be able to pay a discount, they claimed that business would be better."* (O. B. 33.)

What Doyle said in this connection was:

> "When *they* said that because of Art. 3 they had been benefited and might be able to pay a discount, *they* claimed that business would be better. I heard this half a dozen times. It was common talk and was a part of the argument which *they* used in negotiations with *millmen.*" (R. 211.)

The words which the Government has inserted in parentheses at O. B. 33—*"the manufacturers"*—so as to make it appear that Doyle was quoting the manufacturers, is not sustained by the record. He was quoting the contractors. It was their argument as to why the discount should be allowed. He said, "It was common talk and was a part of the argument which *they* used in negotiations with *millmen.*"

23. *Doyle testified, "When the millmen spoke of getting Art. 3 released, I understood that they wished to stimulate their own business."* (O. B. 33.)

It is true that Doyle here did testify as set forth in the opening brief, but he could not remember what was said which gave him this impression, when it was said, nor who said it. It was at best a vague impression which he recalled after the lapse of five years.

Surely his understanding, based on nothing which he could remember, becomes quite insignificant when com-

pared with the positive recollection of Rinn, Reynolds and Morris as to just what was said, when it was said, and why it was said.

These are all the circumstances enumerated. Each and every one are as consistent with one theory as the other. So far as contradicting defendants' claims as to purpose or intent, they do not either singly or in combination, it is earnestly insisted, even cast suspicion.

It follows that the conclusion of the Circuit Court of Appeals both on the law and fact was eminently correct as to the only point it examined.

But there were other important reasons presented to but not considered by the Circuit Court of Appeals as to why the judgment of the District Court should have been reversed. The court's attention is now invited to these additional reasons.

II.

THERE WAS FAILURE OF PROOF AS TO OTHER NECESSARY ALLEGATIONS OF THE INDICTMENT.

Upon the following allegations of the indictment, it is respectfully submitted there was failure of proof:

1. "*Concerns whose plants are located outside of said city and state have been unable to sell or deliver in said city any appreciable quantity of said building material so manufactured by them, or ship any such building material to said city in pursuance of sales thereof, and have been compelled to forego carrying on such interstate trade and commerce therein so far as said City of Chicago has been concerned.*" (R. 4.)

It is not contended any evidence was introduced tending to show diminution of the trade of foreign manufacturers who employed union labor, of whom there were no less than five hundred shipping to and selling in the Chicago market. In fact the evidence discloses that their business was increased.

Neither is it contended any evidence was introduced tending to show interference with shipments to Chicago by any foreign manufacturers, but it is claimed there was evidence that two of the foreign manufacturers who employed nonunion labor did not sell as much building material for local use in Chicago after the change in Art. 3 as they had done before.

It is well to examine the exact state of the record upon this claim. The only witnesses who testified upon the subject were Johnson of the Morgan Sash & Door Co. (R. 148), Finnegan of the Payne Lumber Co. (R. 143), Brown of the Gould Manufacturing Co. (R. 153) and Becker of R. MacMillan Co. (R. 159.)

Johnson testified he was city salesman for the Morgan Sash & Door Co. of Oshkosh, Wisconsin. He had with him certain statements of shipments and sales in the City of Chicago to the Chicago trade (R. 148) from 1910 to a part of 1921, inclusive which was introduced as Government's Exhibit 67. The amount of business in dollars and cents done by the Morgan Sash & Door Co. in the City of Chicago for the year 1916 was $360,488.92; for the year 1917, $149,983.46; for the year 1918, $245,766.03. Of the total business done in the year 1918, $150,811.45 was for material sold to a Chicago contractor to be used at the Great Lakes Naval Station, and $25,079.98 was a holdover on the Sisson Hotel on a contract entered

into in 1917. The business in Chicago in 1919 was $61,234.93; in 1920, $50,582.01; in the year 1921 up to and including Aug. 1st, $90,612.40. In the years 1915, 1916 and 1917 the Morgan Sash & Door Co. sold to both millmen and Chicago contractors. In the years 1918, 1919 and 1920 and part of 1921, materials were sold to the millmen mostly, and cash sales at the factory. (R. 149.) Prior to 1918 he was familiar with the various mills around Chicago. He sold to most of them. He did not sell to those same mills after 1918; he quit calling on the milling trade. He occasionally attempted to sell to some of the members of the Millmen's Association during 1918, 1919 and 1920. He did not sell them. He remembered calling on Bartelmann, Vincent Dlouhy Sash & Door Co., Pilsen Sash & Door Co., Von Platen & Dick Co. He was told by them that they could not buy from him because he was a nonunion mill. (R. 149.)

On cross-examination he testified during all this period from 1917 to 1920, he sold material to the Chicago & Riverdale Lumber Co. Prior to his association with the Morgan people he had worked for the Payne Lumber Co., which firm also sold to the Chicago & Riverdale Lumber Co. (R. 150.)

During 1919 his firm was sold to capacity, but never oversold. During the years 1918, 1919 and 1920 the Morgan Co. carried large stocks of millwork in the warehouses in Chicago. From Chicago it was distributed all over the United States. (R. 151.) It was the policy of his company up to 1916 to sell only to dealers. After that they sold to both dealers and contractors. (R. 151.) They did not sell to scalpers, because the competition was too keen. They could not meet the prices with them. (R. 151.)

The witness Brown testified that he was an accountant in the employ of the Gould Manufacturing Co. Jan. 4, 1919, to June 9, 1923. He identified Government's Exhibits 69 to 72, inclusive as a memorandum prepared by himself, the figures being taken from the sales records. (R. 153.) These lists or statements showed sales to Chicago firms as follows: During the year 1916, $227,000; 1917, $105,000; 1918, $56,000; 1919, $108,000; 1920, $176,000.

The witness Becker testified that he was an accountant for the R. MacMillan Co. They sold material generally throughout the United States to dealers. They did not sell to contractors and builders. He identified Government's Exhibit 73 as having been prepared by him. He said it was correct. (R. 159-160.) This was a statement showing certain sales to certain firms in Cook County, the gross amounts of which were as follows:

During the year 1915, $138,000; 1916, $135,000; 1917, $113,000; 1918, $81,000; 1919, $75,000; 1920, $87,000; 1921, to Aug., $53,000.

The foregoing two statements *did not on their face* purport to be a list of all the sales made to Chicago dealers, and there was no evidence to sustain such theory.

The witness Finnegan testified he was sales manager for the Payne Lumber Co. During the years 1915, 1916 and 1917 he sold to millmen in Chicago that bought outside made material. From the first of Sept., 1919, to the first of Sept., 1921, he sold to jobbers, mail order houses, dealers that were doing business out of Chicago proper. (R. 143.) He identified Government's Exhibit 66 as having been prepared by him. It showed a list of dealers in Chicago to whom he had sold from 1915 to 1921, inclu-

sive, with the amount in dollars and cents for each year. The total sales for the years 1915, 1916 and 1917 by the Payne Lumber Co. in the City of Chicago were $538,729.83. From Apr. 1, 1918, to Sept. 1, 1921, the total business done by the Payne Lumber Co. with concerns described as *the millwork dealers* in the City of Chicago was $21,-194.96. From Apr. 1, 1918, to Sept. 1, 1921, they did business in Chicago with mail order, jobbing houses, and dealers doing business out of the City of Chicago amounting to $388,527.43, of which $214,520.16 had been sold to the Chicago & Riverdale Co. (R. 144.)

Of the total material sold from Apr. 1, 1918, to Sept. 1, 1921, about 6 per cent was used for installation in buildings in the City of Chicago. (R. 144.)

Upon cross-examination he testified that the gross sales in the City of Chicago for the years 1916 and 1917 amounted to about $500,000 per annum. During the year 1918 the Government had 90 per cent of his plant. and they were practically out of the millwork business. During 1919 the total gross sales in Chicago amounted to something over $600,000; in 1920 to $900,000; 1921, $600,000; 1922, between six and seven hundred thousand. (R. 145.)

Prices started upwards about June, 1918, and went very high; the highest he had ever seen. They increased their own prices about 100 per cent. In the fall of 1919 and in the first part of 1920, *his company was not trying to extend its business in Chicago.* (R. 145.) *They could not supply,* in the first four months of 1920, *all that the Chicago & Riverdale Co. asked them to supply, because their plant could not take care of any more business.* They sold to millwork dealers only, who in turn sold to the contractors. (R. 145.)

This evidence showed combined sales of the four companies in the City of Chicago in the year 1917 of $867,000 as against $1,250,000 in 1920, or an increase in 1920 over 1917 of $383,000.

And this was the evidence adduced by the Government to sustain the charge that these foreign manufacturers had been unable to ship to, deliver or sell in Chicago any *appreciable* quantity of their building material. The very most that can be said of the testimony is that it tended to show that as to two of the foreign manufacturers, the Payne Lumber Co. and the Morgan Sash & Door Co., their sales of material to the Chicago trade, for use in *local* construction, decreased; but whether this was because

(a) They were getting better prices elsewhere;

(b) By reason of the increase in demand unable to make proper deliveries; or

(c) Inability or unwillingness to meet the prices at which the same material could be procured from others; or

(d) Because the union refused to handle material which did not bear the union label—

does not appear either by direct testimony or legitimate inference from other facts proven in the case. The only testimony which even tends in this direction was that of the witness Johnson of the Morgan Sash & Door Co., who made no particular effort to sell to Chicago trade, solicited orders *from only four*, and was told by them that they did not desire to purchase because his goods did not bear the union label.

2. *The manufacturing defendants throughout said period of time had manufactured practically all of such building material manufactured in said City.*

It is assumed what is meant is the manufacturing defendants had manufactured practically all of such building material *used locally* in said City.

There was no proof to sustain this allegation. The proof adduced by the prosecution showed that there were between 100 and 150 mills located in Chicago engaged in the manufacture of millwork. (Rec. 196.) Of these about 37 were members of Division G, only 22 of whom were indicted. (R. 234.) The proof adduced by the prosecution did not show the proportion of millwork manufactured by members of Division G as compared to the proportion manufactured by the nonmember mills. It did not show what proportion of the millwork manufactured by all the members of Division G was manufactured by the defendants.

The proof adduced by the prosecution further showed that during the entire time mentioned in the indictment, union made material was being shipped in from foreign mills and being installed and consumed by the building public.

There was therefore an utter failure to sustain this allegation of the indictment, even assuming that "*manufactured*" as used the second time in the sentence meant "*used locally.*"

3. *A purpose upon the part of the manufacturing defendants to monopolize the business of supplying materials in the City of Chicago.*

The indictment alleges a purpose upon the part of the millmen to exclude all foreign made material as a means by which the millmen might secure a local monopoly of the business of supplying materials in the City of Chi-

cago. The purpose to exclude foreign made material has already been discussed. No proof was adduced to sustain the allegation.

Neither was any proof adduced to sustain the allegation of a purpose to *monopolize the business* of supplying material in the City of Chicago; no witness produced by the prosecution so testified. There was no evidence of any statements or declarations from which such purpose might be inferred. Neither was any fact proven upon which such inference might be predicated. Such purpose could not be deduced from the effect, because no monopoly or possibility of monopoly, or fact or facts tending to indicate any possibility of monopoly were presented. The evidence adduced by the Government showed that during the entire period covered by the indictment, foreign union mills were supplying the Chicago demand in competition with the local mills. The Hardwood Products Co. unionized its mills and sold to a large group of the Chicago millmen on a cost plus 10 per cent basis.

There was, therefore, no evidence presented to sustain this allegation.

4. *A purpose upon the part of the manufacturing defendants to secure excessive prices for their own building material.*

No evidence was presented to sustain this allegation. Only two witnesses testified for the prosecution upon the subject of prices—Fisher, who based his deduction on one item of door jambs costing 97c f. o. b. Chicago, to which he added 30 per cent for overhead and profit, and resold to customers at $1.26. He did not take into consideration cost of warehouse and cartage. This was com-

pared with the price of $1.41 for the same item quoted at the same time in Chicago *by one concern.* (R. 131.)

The witness Panos made two comparisons; one in the fall of 1919; one in May or June, 1921. The first was on doors. He consulted one local mill. He asked for a price and was refused. He got the price by leaving out a couple of doors for which he was allowed $7 each. He concluded from this that the current price on doors in Chicago at that time on that character of door was $7. (R. 136.)

In the spring of 1921 he compared prices on doors and sash. He consulted only two local mills, Anderson & Lind, and James Wilborn. He said the price quoted him on doors was very reasonable. (R. 137.)

The matter of prices charged by the local mills during the period covered by the indictment was a thing easily susceptible of accurate proof, both from the books, records and documents of the corporate defendants themselves, which were available to the Government, and from the records of contractor and builder customers. Had the prices charged been excessive, this was a matter easily proved. The fact that the prices were excessive might have sustained an inference of purpose to secure excessive prices but there was no evidence *of what the prices were,* much less that they were *excessive.*

There was, therefore, no evidence to sustain this allegation of the indictment.

5. *Builders and building contractors had been under the practical necessity of employing members of said organization (United Brotherhood of Carpenters and Joiners of America) and submitting to the rules of said*

organization, because there had not been enough carpenters and joiners, there or otherwise obtainable not belonging to said organization to perform more than a very small fraction of the work required to be done in that line.

Not one scintilla of evidence was adduced by the Government to sustain the allegation—

(a) That builders had been under the practical necessity of employing union labor;

(b) That there had not been enough carpenters and joiners there or otherwise obtainable.

For all that appears in the evidence presented by the prosecution, there were sufficient journeymen carpenters not belonging to the United Brotherhood to meet all the requirements of the Chicago public.

There was, therefore, no evidence to sustain the allegation. *It was taken for granted.* But a plea of not guilty puts in issue every material allegation of the indictment and places upon the prosecution the duty of proving it as laid.

6. *The conspiracy charged has substantially, materially and unreasonably restrained interstate trade and commerce.*

Not one scintilla of evidence was presented by the prosecution to sustain this *most material* allegation of indictment. No facts were proven from which the *slightest judgment* could be formed as to whether what restraint there was, if any, was substantial, material or unreasonable.

No evidence was introduced by the prosecution as to—

(a) The amount of building material consumed by the Chicago building public,

(b) Of the total amount consumed, what was manufactured locally and what was manufactured in states other than Illinois,

(c) Of that portion manufactured in states other than Illinois, what proportion was manufactured by nonunion mills,

(d) The extent to which that portion which had been manufactured by foreign mills and shipped into Chicago had been diminished,

(e) As to the foregoing diminution, if any, to what extent it was affected by the refusal of union labor to install material not bearing the union label, as against other factors, such as quality, prices, ability to make deliveries, etc.

There was, therefore, no evidence to sustain this allegation of the indictment.

7. *The people of the City of Chicago have been compelled by the resulting scarcity of, or the exorbitant prices for building material, to forego the building of a great number of houses and buildings required by them to house the people and conduct the business of the City.*

There was no evidence presented by the prosecution to sustain any of these allegations. Not a single witness testified that there was any scarcity of building material or that exorbitant prices had been charged therefor. Neither were any facts presented which would support such inference. No witness testified that the people of Chicago had been compelled to forego the building of any houses, nor were any facts presented upon which such inference could be predicated.

8. "*Each of said manufacturer defendants* • • • *well knew all of the circumstnces and premises aforesaid, and intended to bring about the above mentioned results*

of said unlawful conspiracy and to restrain said interstate trade and commerce in the way above described." (R. 5.)

No evidence was introduced by the prosecution to sustain this alleged intent to violate the Act; neither were any facts presented which would sustain an inference of such intent. The alleged intent could not be predicated upon the assumption that since the Act was in fact violated, and since men are presumed to intend the natural consequences of their acts, they may be held to have intended violation because, as shown before, no violation of the Act was shown by reason of the absence of any evidence as to the alleged purposes and effects of the conduct set forth.

It is, therefore, earnestly submitted that the Government failed to introduce any evidence to sustain those essential allegations of the indictment, without proof of which no case in violation of the Sherman Act could have been stated.

III.

THE DISTRICT COURT ERRED IN INSTRUCTING THE JURY THAT EFFECT IS CONCLUSIVE OF PURPOSE.

The court was requested to instruct the jury as follows:

> "The known effect of certain acts is not necessarily conclusive evidence of the purpose with which such acts are done. The known effect of such acts is but one of the circumstances to be taken into consideration, with all other evidence in the case, in arriving at a conclusion as to what was in fact the purpose with which the acts were done." (R. 298.)

It is believed the principle here announced is correct

in law. Its importance to the defendants cannot be overstated. The learned Assistant to the Attorney General had told the jury in his closing argument:

> "Now Mr. Rinn says that what he did was for the purpose of preventing a strike. Well, I don't care whether it was to prevent a strike or not; that would be just as unlawful so far as that is concerned, and I think the court will tell you that, and it does not make any difference if they knew what the effect would be, and every man who had any sense knew that. If you believe Mr. Rinn you have no doubt of his guilt. Now keep that in your mind—that if the commerce of the Payne Company was interfered with the law was violated." (R. 285.)

So that one of the precise points of debate before the jury in the closing argument was whether known effect was conclusive of purpose.

But not only did the court refuse the instruction, but, in its general charge to the jury announced the exact contrary, as follows:

> "Nor is it necessary for the Government to prove that a defendant intended by his actions to violate the Anti-Trust Act or to restrain interstate commerce. *If he purposely engaged in the conspiracy alleged*, and the necessary and direct result of such conspiracy was to *materially* restrain interstate commerce in the material described, he is legally chargeable with intending that result *and cannot be heard to say the contrary.*" (R. 291.)

Thus the jury was told that effect is conclusive evidence of purpose; if commerce was in fact restrained, the intent becomes fixed and a defendant "cannot be heard to say the contrary."

But if effect is conclusive of purpose, and the act is always violated when the effect of conduct is to restrain interstate commerce, then no other question is

open in any case except the question, was interstate commerce in fact restrained?

But, as said in *Board of Trade* v. *U. S.* 246 U. S. 231, 62 L. 683:

> "The illegality of an agreement or regulation cannot be determined by so simple a test as whether it restrained competition."

If purpose is immaterial and effect the only essential, every business activity violates the Sherman Act. Every common carrier which transports freight or passengers from one state to another, lessens *pro tanto* the interstate commerce of some competing carrier, and therefore the effect of the act of carriage is to diminish the interstate traffic of the competitor. Every manufacturer who sells his merchandise, restrains to the extent of his sales the interstate trade and commerce in similar merchandise. The effect of every railroad strike upon interstate carriers is to restrain interstate commerce. The effect of a strike in the plant of a manufacturer engaged in interstate commerce is not only to restrain, but to shut it off completely.

The court has already seen that upon the question of intent rested the whole dispute as to facts. Since it was of such prime importance, its elimination from the consideration of the jury, or its conclusive establishment solely from effect, which is the same thing, was most damaging. Taken in connection with the further instruction of the court—

> "The desire to prevent a possible or probable strike and the shutting down of factories, would constitute no legitimate excuse for such conduct," (R. 291.)

it was equivalent to a peremptory instruction to bring in a verdict of guilty. No theory was left to the jury upon which they could acquit.

IV.

THE DISTRICT COURT ERRED IN INSTRUCTING THE JURY THAT AN UNDERSTANDING BETWEEN THE MILLMEN AND LABOR UNION DEFENDANTS WAS UNNECESSARY.

The District Court charged the jury:

> "It is not necessary that the Government prove that the Millmen or manufacturing defendants, or any of them, and the Labor Union defendants, communicated directly with each other *and came to a positive understanding as to their course of conduct.* If the union defendants and the contractor defendants or any of them had under negotiation an agreement, which, if carried into effect, would necessarily and directly restrain interstate commerce in sash doors and interior trim, and any of the manufacturing defendants counseled, aided and abetted in having said agreement consummated, *knowing why the agreeemnt was desired by the union,* and that the result would be to materially restrain interstate commerce in the material mentioned, they and all others who knowingly and purposely joined them in carrying said agreement into effect, were guilty, and *the desire to prevent a possible or probable strike and shutting down of factories would constitute no legitimate excuse for such conduct.*" (R. 291.)

This instruction, it is respectfully submitted, is open to the following objections:

(a) The jury was in effect told that it was not necessary that the manufacturing defendants and the Labor defendants communicated directly with each other and came to a positive understanding as to their course of conduct.

But this was the *conspiracy described in the indictment*: The manufacturing defendants offered to employ

only members of the Labor Union if the latter would refuse to install foreign-made material.

Such a charge by its very terms, necessitates a direct communication, *and a "positive understanding" as to course of conduct.* The case would be different had the indictment merely charged a conspiracy between labor and manufacturing defendants, to secure the elimination of the competition of foreign-made material. Such charge might have been sustained by proof of concert of action unaccompanied by direct communication or perhaps "*positive understanding*".

But this is not the charge. The jury are in effect told that they may find the manufacturing defendants guilty of an offense different from that charged in the indictment.

(b) The jury are in effect told that the Millmen are guilty if they aided and abetted a conspiracy between the labor and contractor defendants.

But the indictment charged a conspiracy between the Millmen wherein the Labor and Contractor defendants were the aiders and abettors. Again, the jury were told in effect that they might convict *for a different conspiracy than that charged.*

(c) The jury was in substance told that if the effect of the proposed agreement between the labor and contractor defendants was to restrain commerce, the manufacturing defendants were guilty if they counseled, aided and abetted in having the agreement consummated, even though actuated by the purely local purpose of keeping open their own factories.

As already pointed out, this is an erroneous statement of the law, because—

1. It makes the *mere restraint* of interstate commerce a violation of the act.

2. It eliminates *criminal intent* as a factor in the offense.

3. It makes effect *conclusive* of purpose.

V.

THE DISTRICT COURT ERRED IN INSTRUCTING THE JURY THAT CRIMINAL INTENT WAS NOT NECESSARY, AND IN REFUSING TO INSTRUCT THE OPPOSITE.

The Court was requested to give the following instructions to the jury:

7.

"Under the penal provisions of the Sherman Act upon which the indictment in this case is based, it devolves upon the prosecution to prove beyond a reasonable doubt, that the defendants had a criminal intent, and criminal intent means an intent or purpose to do knowingly and willfully that which is condemned as wrong by the Act." (R. 298.)

8.

"One of the essential elements to be proved by the Government in this case, before you can find the defendants guilty, is that of criminal intent." (R. 299.)

9.

"This is not a civil case. It is a criminal prosecution. In such cases a criminal intention must accompany the act in order to constitute a crime. The act itself, while it may be the basis for the inference

of a criminal intention by the jury, and is frequently irrefragable evidence of such intent, if unaccompanied by such criminal intent, is not crime.' (R. 299.)

14.

"The gist of the crime of conspiracy consists of a corrupt agreement between two or more individuals to do an unlawful act either as a means or as an end. The criminal quality resides in the intention of the parties to the agreement construed in connection with the purpose contemplated." (R. 300.)

15.

"The mere fact that the conspiracy has for its object the doing of an act which may be unlawful, followed by the doing of such act, does not constitute the crime of conspiracy unless the jury finds that the parties were actuated by a criminal intent." (R. 301.)

16.

"The actual crime or wrongful purpose must accompany the agreement or combination, and if that is absent, the crime of conspiracy has not been committed. It is alike the general rule of law and the dictate of natural justice, that to constitute guilt there must not only be a wrongful act but a criminal intention." (R. 301.)

18.

"The federation must be corrupt. If the motives of the confederates are not corrupt, no criminality can attach to the confederation.

"If you believe from the evidence that the defendants acted in good faith in the honest belief that they were doing what they had a legal right to do, you must acquit even though the effect of what defendants actually did, was to restrain trade." (R. 302.)

These requests were in proper form; they contained a correct statement of the law; they were applicable to each of the defendants; they were not embodied or implied in any portion of the Court's general charge.

Not only did the court decline to give any of the above requested instructions, but it in substance instructed the jury that criminal intent was not necessary. Thus, in its general charge, the Court said:

> "Nor is it necessary for the Government to prove that a defendant intended by his actions to violate the Anti-Trust Act or to restrain interstate commerce. If he purposely engaged in the conspiracy alleged, and the necessary and direct result of such conspiracy was to materially restrain interstate commerce in the material described, he is legally chargeable with intending that result, and cannot be heard to say the contrary." (R. 291.)

Had the Court ceased with the sentence "*He is legally chargeable with intending that result,*" it might have been argued that the question of whether a criminal intent was essential had been left open, and the error would have been one of omission. But by the addition of the words "*and cannot be heard to say the contrary,*" the Court very clearly makes effect conclusive of guilty purpose, that is to say, no matter how laudable and innocent a man's motives and purposes may have been, nevertheless, if he did something, the effect of which he knew would be to restrain interstate commerce, he is guilty of a violation of the Act.

This position, of course, is in the teeth of the decision in the first Coronado Case, where the effect of the conduct complained of, was not only to materially restrain the interstate commerce of the coal company but to cut it off entirely.

And so the question arises as to whether there can be a conviction for violation of the penal provisions of the Sherman Act in the absence of *criminal intent.*

Our views are respectfully presented under the following captions:

(a) *Fundamental rules of criminal law.*

Except in certain statutory offenses, purely *mala prohibita,* such as accepting a rebate, running a car without a license number, etc., every crime is composed of act and intent, and to constitute the crime, the act must be accompanied by an evil intent, or by such negligence or indifference to duty or to consequences, as is regarded as equivalent to a criminal intent.

The maxim is "*Actus non facit reum nisi mens sit rea,*" and it is universal.

As well said in *Duncan* v. *State,* 7 Humphrey (Tenn.), 148:

> "It is a sacred principle of criminal jurisprudence that the *intention* to commit the crime is of the *very essence* of the crime and to hold that a man shall be held criminally responsible for an offense of the commission of which he was ignorant, at the time, would be an intolerable tyranny."

And this Court, has time and again, laid down the same doctrine. Thus in *United States* v. *Cruikshank,* 92 U. S. 542, 23 L. 588, which was a conspiracy to prevent the exercise of a right under the laws of the United States:

> "A crime is made up of acts and *intents.* These must be set forth in the indictment with reasonable particularity of time, place and circumstances."

The same language was used in *United States* v. *Hess,* 124 U. S. 483, 31 L. 516.

In *United States* v. *Quincy*, 6 Peters 445, 8 L. 458, there was an indictment for fitting out and arming within the limits of the United States, a vessel to be used in the service of a foreign people to commit hostilities against a country with which the United States was then at peace. The court said:

> "This intention is a question belonging exclusively to the jury to decide. *It is the material point on which the legality or criminality of the act must turn.*"

In *Pettibone* v. *United States*, 148 U. S. 197, 37 L. 419, there was an indictment for conspiracy to obstruct the administration of justice in a court of the United States. After conviction the case was remanded and reversed with instructions to quash the indictment because it did not sufficiently allege *an intent to violate the statute*. The court said:

> "*But the specific intent to violate the statute must exist to justify a conviction.*'

In *Davis* v. *United States*, 160 U. S. 469, 40 L. 499, it is said:

> " 'To make a complete crime cognizable by human laws, there must be both a *will* and an *act;*' and 'as a vicious will without a vicious act is no civil crime, so, on the other hand, an unwarrantable act without a vicious will is no crime at all. So that to constitute a crime against human laws, there must be, first, *a vicious will;* and, secondly, an unlawful act consequent upon such *vicious will.*' "

(b) *As applied to conspiracies generally.*

A conspiracy is an offense which is *mala in se*. It is so by very definition—a *corrupt* combination between two or more to do something unlawful, or to do something lawful by unlawful means, or, in the language of

Bishop, "The *corrupt* agreeing to do something unlawful either as a means, or as an end." It is the corruptness of the agreement which makes the offense *mala in se.*

In *Callan* v. *Wilson,* 127 U. S. 540, 32 L. 224, defendant was a member of a union of musicians, which it was alleged had established a boycott against one Franz Krause and others by refusing to work for anyone who employed Krause, because the latter had refused to pay a fine assessed against him by the union.

Defendant was charged with having conspired to extort from Krause the amount of the fine, and to prevent Krause and others from pursuing their calling and trade anywhere in the United States, and to boycott, injure and reduce him to beggary and want.

Defendant was denied a jury trial and convicted in the police court of the District of Columbia. He sued out a *habeas corpus* on the ground, among others, that the offense of conspiracy being an *infamous crime,* he was guaranteed a jury trial by the Constitution of the United States.

In sustaining his contention that he was entitled to a jury trial, and in finding that the offense of conspiracy *is an infamous crime,* this Court, after a careful review of all the authorities, said:

> "These authorities are sufficient to show the nature of the crime of conspiracy at common law. It is an offense of *grave character,* affecting the public at large, and we are unable to hold that a person charged with having committed it in this District is not entitled to a jury when put upon his trial.
>
> "The jurisdiction of the police court as defined by existing statutes does not extend to the trial

of *infamous crimes* or offense punishable by imprisonment in the penitentiary."

Hence, in conspiracies, as in all other crimes, which in their nature are *mala in se*, the act must be accompanied by a criminal intent.

In *People* v. *Flack* (Court of Appeals N. Y. 1891), 26 N. E. 267, defendants were indicted for a conspiracy to fraudulently secure a divorce.

In construing the law of conspiracy, the Court said:

"The gist of the crime of conspiracy consists in a corrupt agreement between two or more individuals to do an unlawful act, unlawful either as a means or as an end.

"*The criminal quality resides in the intention of the parties to the agreement, construed in connection with the purpose contemplated.*

"The mere fact that the conspiracy has for its object the doing of an act which may be unlawful, followed by the doing of such act, does not constitute the crime of conspiracy, unless the jury find that the parties were actuated by a *criminal intent.*

"In many cases this inference would be irresistible; in others the jury might find that, although the object of the agreement and the overt act were unlawful, nevertheless the parties charged acted under a misconception or in *ignorance*, without any actual criminal motive.

"If that conclusion should be reached by the jury, then, whatever other criminal penalties the parties might have incurred, the crime of conspiracy would not have been established, and the defendants would be entitled to an acquittal.

"*The actual criminal or wrongful purpose must accompany the agreement*, and, if that is absent, the crime of conspiracy has not been committed.

"It is alike the general rule of law, and the dic-

tate of natural justice, that to constitute guilt there must not only be a wrongful act, but a *criminal intention.*"

Upon the trial, the court had charged the jury as follows:

> "'I ought to say, not as a supplement to the proposition, but as an independent proposition, that ignorance on the part of the defendants, or any of them, *of the meaning of this statute* (conspiracy statute), cannot be a shield to them, if you believe they have committed the acts. If you believe beyond a doubt that they have committed the acts which constitute the offense as I have defined it to you, then they are guilty.'
>
> "On exception being taken to this instruction, the court said, 'I refer to that, because you will recollect that each of these defendants, when put upon the stand, were asked if they had conspired, if they had perverted the law, or perverted the administration of justice, and William L. Flack at one time said he did not know what that meant.
>
> "'Of course, gentlemen, this is of no consequence. The question is whether they have done the acts which bring the case within the language of the statute,—the perversion of justice or of the due administration of the law.'"

As to this instruction, the Court of Appeals said:

> "The court in these instructions disregarded the fundamental rule that a *criminal intention* must accompany the act in order to constitute crime, and that the act, while it may be the *basis for the inference* of a criminal intention by the jury, and is frequently irrefragable evidence of such intent, if unaccompanied by such criminal intent, is not crime."

After the jury had retired, they came in for further instructions on the question of definition of criminal intent, whereupon the court said to them:

"'If he (a defendant), has no moral sense, or is ignorant of the law, he is still guilty; if he does the unlawful act, and intends to do such act, and is a sane man;'"

As to this instruction, the Court of Appeals said:

"This instruction made the question of guilt depend solely upon the *intentional doing of an unlawful act.* It was a substantial reaffirmance by the judge of the doctrine of the charge, that, although there was no intention on the part of the defendants to do anything wrong, if the acts done were within the conspiracy act, and the intention was to do these acts, the defendants were guilty.

"For reasons hereinbefore stated, this instruction was erroneous."

In *Salas* v. *U. S.* (C. C. A. 2d C. 1916), 234 Fed. 843, Salas was convicted for conspiracy to defraud the United States. He had agreed to give Burke, the purchasing agent for the Panama Canal Ry. Co., a corporation owned by the United States Government, one-half of the profits derived from the sale of tobacco by Salas to the Railway Company. In reversing the case, the Circuit Court of Appeals held that it did not sufficiently appear that Salas had a *guilty intent,* because it was not shown beyond reasonable doubt, that he knew anything about the relations between the Railway Company and the United States Government.

In *Buchanan* v. *United States* (C. C. A. 8th C. 1916), 233 Fed. 257, Buchanan and others were convicted of a violation of Section 19 of the Penal Code, making it a crime for two or more persons to conspire to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitutional Laws of the United States.

Buchanan and others went upon the lands held by one Scott under an unperfected homestead entry under the laws of the United States, and tore down and removed buildings and improvements.

The theory of the Government was that here was a conspiracy to injure Scott in his exercise of his homestead right under the laws of the United States. Defendants were convicted. In reversing the case, the Circuit Court of Appeals said:

> "But there was a question whether their *intent* was to interfere with the exercise by the Scotts of their homestead right, or, on the other hand, and wholly aside from the character of the occupancy of the land, they believed Buchanan owned the improvements and was entitled to remove them.
>
> "*If that belief was entertained in good faith*, and the intent of Buchanan's helpers was to aid him in the assertion of his supposed title, they did not violate the Act of Congress.
>
> "The legal quality and consequences of an act are not always apparent or definitely indicated. Some acts are of such an equivocal or ambiguous character that the judicial inquiry turns wholly upon *the particular motive* which may be disclosed by extrinsic evidence."

In *State* v. *Flynn*, 28 Iowa 26, Flynn was indicted for conspiracy to injure the property of another. Under claim of right so to do he had undertaken to remove the dwelling house of the complaining witness, claiming title to said structure. He claimed that he honestly believed he had the legal right to remove the house, and that he and his associates acted in good faith upon this supposition. He was convicted.

In reversing the case, the Court said:

> "The great weight of the testimony, if not, indeed,

the whole body of it, is to the effect that the house in question was built and owned by the appellant, with the right to remove it.

"The criminal act complained of is the attempt to remove the house by raising it up with screws and putting blocks under it.

"Without taking up the space to review the evidence, let it suffice to state that it clearly satisfies us that what defendant did in preparing to remove the building was done *in the exercise of an avowed legal right,* the existence of which the testimony conduced strongly, if not conclusively to establish, *and that it was not done in pursuance of a conspiracy wrongfully to injure, with malicious or fraudulent intent, the property of another.*"

In *People* v. *Klaw* (Ct. of Gen. Sess. N. Y. 1907), 106 N. Y. Suppl. 341, defendants, owners of theaters throughout the country, arranged for booking attractions so as to enable their companies to save expense by making continuous tours. They agreed amongst themselves—

(a) Not to produce attractions controlled by rival interests,

(b) To produce only such attractions as agreed not to play any rival theaters.

Defendants were indicted for conspiracy to commit an act injurious to trade or commerce. The court, after quoting with approval other cases, said:

"Tested by the principles laid down, it seems that there must be a *corrupt agreement* between two or more individuals entered into with a criminal intent to do an unlawful act which must be followed by the doing of an unlawful act, and that the motive for the agreement is to prevent someone from exercising a lawful trade or calling, since a 'conspiracy is a combination to do an illegal act by legal means, or any act by illegal means.'"

In *State* v. *State* (N. J. 1885), 1 Atl. 509, members of the County Board were indicted for conspiracy to wrongfully vote a sum of money out of the county funds to a third person. The indictment did not charge that the confederation had a corrupt purpose. The Court held the indictment fatally defective, saying:

> "It may not be easy to exactly define by a general formula what elements of fact are essential to constitute such a combination a criminal conspiracy; but it may be safely said that the motives of the confederates *must be corrupt,* or no criminality can attach to such a consideration.
>
> "There is in this indictment a failure to charge a corrupt purpose in entering into the agreement, without which it is not a conspiracy."

In *People* v. *Powell,* 63 N. Y. 88, defendants were commissioners of charities, and were indicted for conspiracy to omit, refuse and neglect to advertise for supplies as required by statute.

The trial judge charged that without regard to defendant's ignorance of the existence of the statute, the agreement to violate the act, followed by conduct in furtherance of the agreement, constituted a conspiracy. This was held error, the court remarking that it was not enough that the act which was the object of the conspiracy was prohibited, the confederation must also be corrupt. The actual criminal intention belongs to the definition of conspiracy. The court said:

> "Persons who agree to do an act innocent in itself, *in good faith,* and without the use of criminal means, are not converted into conspirators because it turns out that the contemplated act *was prohibited by statute.*"

In *Pettibone* v. *United States,* 148 U. S. 197, 37 L. 419, defendants were indicted under Sections 5399 and 5440

R. S., for a conspiracy to obstruct the administration of justice in a court of the United States. A motion was made to quash the indictment on the ground that no intent to commit the crime sufficiently appeared. This motion was overruled, and the defendants were tried and convicted. On writ of error to this Court the case was reversed and remanded with instructions to quash the indictment. It was said:

> "It seems clear that an indictment against a person for *corruptly* or by threats or force endeavoring to influence, intimidate, or impede a witness or officer in a court of the United States in the discharge of his duty, must charge knowledge or notice, or set out facts that show knowledge or notice, on the part of the accused that the witness or officer was such.
>
> "And the reason is no less strong for holding that a person is not sufficiently charged with obstructing or impeding the due administration of justice in a court unless it appears that he knew or had notice that justice was being administered in such court.
>
> * * * * *
>
> "It is insisted, however, that the evil intent is to be found, *not in the intent to violate the United States statute,* but in the intent to commit an unlawful act, in the doing of which justice was in fact obstructed, and that, therefore, the intent to proceed in the obstruction of justice must be supplied by a fiction of law.
>
> "*But the specific intent to violate the statute must exist to justify a conviction,* and this being so, the doctrine that there may be a transfer of intent in regard to crimes flowing from general malevolence has no applicability."

In *U. S.* v. *Cruikshank,* 92 U. S. 542, 23 L. 588, defendants were indicted for conspiracy to prevent certain negroes from the free exercise and enjoyment of their rights and privileges as citizens of the United

States. Motion to quash the indictment was overruled, and the defendants were convicted. On writ of error to this Court the conviction was reversed, and the cause remanded, because it did not appear that the acts done by the defendant were done with a criminal intent. It was said:

> "Inasmuch, therefore, as it does not appear in these counts that the *intent of the defendants* was to prevent these parties from exercising their right to vote on account of their race, etc., it does not appear that it was their intent to interfere with any right granted or secured by the Constitution or laws of the United States.
>
> "We may suspect that 'race' was the cause of the hostility; but it is not so averred. This is material to a description of the substance of the offense, and cannot be supplied by implication.
>
> "Everything essential must be charged positively, and not inferentially. The defect here is not in form, *but in substance.*
>
> "We are, therefore, of the opinion that the first, second, third, fourth, sixth, seventh, ninth, tenth, eleventh, twelfth, fourteenth and fifteenth counts do not contain charges of a criminal nature made indictable under the laws of the United States, and that, consequently, they are not good and sufficient in law.
>
> "They do not show that it was the *intent* of the defendants, by their conspiracy, to hinder or prevent the enjoyment of any right granted or secured by the Constitution.
>
> * * * * *
>
> "A crime is made up of acts and *intent;* and these must be set forth in the indictment, with reasonable particularity of time, place and circumstances."

(c) *As applied to the Sherman Act.*

As to whether the offense is *mala in se,* or *mala prohibita,* there is not the slightest distinction between a

conspiracy to violate the *Sherman Act* and *any other conspiracy*. It is precisely the same as Sec. 5440 R. S., now Sec. 37 of the Penal Code—

> "If two or more persons conspire either to commit any offense against the United States or defraud the United States in any manner, or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy," etc.

with the exception that under the above statute an overt act is required, while under the Sherman Act the offense becomes complete with the formation of the conspiracy and no overt act is necessary.

Nash v. *U. S.* 229 U. S. 374, 57 L. 1233.
U. S. v. *Patterson*, 201 Fed. 697.
U. S. v. *Cowell*, 243 Fed. 730.

Therefore, every precedent and authority which establishes or holds that a criminal intent is essential to constitute the offense of conspiracy, is directly applicable to conspiracies to violate the Sherman Act. But there is one case in which the very question arose in a prosecution under the Sherman Act.

In *Citizens Wholesale Supply Co.* v. *Snyder* (C. C. A. 3rd C. 1913), 201 Fed. 907, defendants combined to enforce a city ordinance prohibiting the peddling of merchandise without a license. This Court held the ordinance invalid and void as against the commerce clause.

It followed defendants *had combined to restrain interstate commerce of plaintiff*, an Ohio corporation. Plaintiff sued for treble damages under the Sherman Act. But the court held there could be no recovery, because the defendants, though guilty of restraining interstate commerce, *nevertheless acted in good faith.*

No other case can be found in the decisions either of the United States District Court, the Circuit Courts of Appeal or this Court in which the question has been presented and decided, for the reason it is believed *no one has heretofore ever assumed that a criminal intent was not an essential element of the crime of conspiracy to violate the Sherman Act.*

Universally have the trial courts instructed the juries that such criminal intent was essential, and the question has therefore, except in the one instance *never been presented to an Appellate Court.*

Thus, in Judge Carpenter's charge in the celebrated Packers' Case, the jury were instructed:

> "One of the essential elements to be proved by the government in this case, before you can find the defendants guilty, *is that of criminal intent.*"

No case can be found in this country, Great Britain or any of its colonies, where any court has ever before intimated that a criminal intent was not essential to the crime of conspiracy.

Of course a criminal intent may be, and usually is, inferred from the conduct itself, but this is a rule of logic and proof, flowing from the presumption that men intend the known consequences of their acts. *But that the criminal intent must actually exist is a universal which recognizes no exception.*

And the existence of the criminal intent is a question of fact for the jury.

What is the use of character witnesses save on the question of criminal intent?

(d) *The injustice of the contrary view.*

It is wholly inconceivable that it could be the policy of any just government to convict citizens who are innocent *in point of fact* of an infamous crime, *thereby placing upon them forever the stamp of criminality.* And yet this is the direct result of holding that criminal intent is not a necessary element of the offense.

If any offense could be conceived of, in which as a matter of justice it should be more essential that a criminal intent appear than in some other offense, it would be for violation of the Sherman Act, for it is well known that a very wide zone exists between conduct known to be violative of the Act and conduct not known to be prohibited.

And as to the cases falling within this zone, no one can tell, prior to a decision by this Court as to whether the challenged conduct is violative of the Act. And even learned justices of this Court frequently differ with each other as to what conduct is prohibited.

Thus in *United States* v. *United Machinery Co.,* the division was 6 to 3; in *United States* v. *Steel Corporation,* 4 to 3; in *Trade Commission* v. *Anderson Gratz,* 7 to 2; in *Duplex Printing Co.* v. *Deering,* 6 to 3; in *Frey* v. *Cudahy Packing Co.,* 6 to 3; in *Truax* v. *Corrigan,* 5 to 4; in *American Column & Lumber Co.* v. *United States,* 6 to 3; and in *Trade Commission* v. *Beech-Nut,* 5 to 4.

Here, then, on exactly the same state of facts, *precisely the same course of conduct challenged,* the learned justices divide in opinion as to whether violative of the Act.

Is it possible that under such circumstances a citizen of recognized and proven good character may be con-

victed of *an infamous crime*, because he and his attorney, in good faith, adopted that view of the law *concurred in by four of the justices of the Supreme Court?*

It is earnestly submitted that a mere statement of the proposition should be sufficient.

In *Landen* v. *United States*, 299 Fed. 75 (C. C. A. 6th Cir.), defendants were indicted for conspiracy to violate the National Prohibition Act. Defendants were wholesale druggists. On June 28, 1921, a permit was issued to them by the Federal Prohibition Commissioner which gave them general and prima facie unlimited permission to sell liquor for other than beverage purposes, "unless revoked or renewed as provided by law or regulations."

Thereafter on August 15th, a regulation was adopted, the effect of which was to limit the amount of sales to ten per cent of the gross amount of business done by them as wholesale druggists. There was a dispute as to the interpretation of the provisions of the regulation. There was no question as to the defendants' selling more than the prescribed amount. They were convicted and sued out a writ of error. The court said:

> "Upon the trial it was consistently ruled that the respondents interpreted this regulation at their peril, and that no amount of good faith in following the advice of counsel, and no mistake in solving any ambiguity in the regulation could serve as a defense. We think this was error."
>
> * * * * *
>
> "It is settled that with regard to criminal prosecutions for those acts which are not *mala in se*, but which through legislative exercise of the police power have become *mala prohibita*, no conscious intent to break any law is essential. The respondent need not even know that the law exists.

"When, however, the prosecution is for conspiracy, the textbooks and elementary discussions seem to agree that there must be a 'corrupt intent,' which is interpreted to be the *mens rea*, the conscious and intentional purpose to break the law.

* * * * *

"The principle that even a mistake of law may protect one accused of crime has familiar illustration in the rule that, if the respondent in a prosecution for larceny took the property in a good faith, though erroneous, belief that he had the legal right to its possession, he is not guilty.

"The principle was applied to conspiracy in *People* v. *Powell*, 63 N. Y. 88, 91, 92. In a careful opinion by Judge Andrews, the difference between the intent involved in the substantive offense, which intent the law will imply from the act, and the 'corrupt intent' necessary to make conspiracy, which intent *does not necessarily* follow from a plan to do the act, is clearly pointed out.

"The case has stood for 50 years as the leading one on the subject, and if it be confined, as it is (page 92) to a plan to do an act 'innocent in itself,' it has never, so far as we find, been questioned.

"The principle of these two decisions does not reach a case where the contemplated act is not inherently wrongful, where the prohibitory statute is ambiguous, where there is good reason for both lawyers and laymen to think that the act planned is not prohibited, and where the respondent plans and does the act in the actual belief, supported by good-faith advice of counsel, that it is a lawful act.

"In such a situation the conclusion that the respondent has a 'corrupt intent' to violate the law is, in our judgment, one repugnant to the fundamental principles of justice, and not to be adopted unless under the compulsion of authoritative decisions.

"We find nothing requiring such adoption."

The only answer of the government to this point in the Circuit Court of Appeals was that under the author-

ity of the "Patten Case" a criminal intent is not an essential element of a conspiracy under the Sherman Act.

But an examination of the "Patten Case" will disclose that it by no means sustains such contention. The point there decided was whether or not, in view of the specific conduct charged in the indictment, it was necessary to have an allegation in the indictment "of a specific intent *to restrain such trade.*" The question of whether or not a criminal intent was a necessary element of a conspiracy under the Sherman Act was not presented, argued or decided.

In the "Patten Case" the Circuit Court for the Southern District of New York had sustained a demurrer to certain counts in an indictment, and the United States sued out a writ of error to this court. The conduct complained of was a conspiracy in restraint of trade through the operation of a *"corner."* It was alleged with great particularlity—

> 1. "The conspirators were to make purchases from speculators upon the New York Cotton Exchange, of quantities of cotton for future delivery, greatly in excess of the amount available for delivery when deliveries should become due."
>
> 2. "By these means an abnormal demand was to be created on the part of such sellers, who would pay excessive prices to obtain cotton for delivery upon their contracts."
>
> 3. "The excessive prices prevailing upon the New York Exchange would cause similar prices to exist upon other cotton markets."
>
> 4. "As a necessary and unavoidable result of their acts, said conspirators were to compel cotton manufacturers throughout the country to pay said excessive prices to obtain cotton for their needs, or else curtail their operations."

5. "As a necessary and unavoidable result of said acts, an unlawful obstruction would be put upon interstate trade and commerce."

The court found that the conduct described in the indictment imposed a direct burden upon interstate commerce; that the defendants had a *purpose* to bring within their "dominating influence the entire cotton trade of the country, to obtain control of the available supply, and to enhance the price to all buyers in every market of the country."

This court then said:

"And that there is no allegation of a *specific intent to restrain such trade* or commerce does not make against this conclusion, for, as is shown by prior decisions of this court, the conspirators must be held to have intended the necessary and direct consequences of their acts, and cannot be heard to say the contrary. In other words, by purposely engaging in a conspiracy which necessarily and directly produces the result which the statute is designed to prevent, they are, in legal contemplation, *chargeable* with intending that result."

Not a word is said about *criminal intent.* The question was not presented or argued in the briefs. It is not discussed by the court. Undoubtedly the indictment charged the criminal intent in the usual and formal manner, for the court itself says:

"The charging part contains a general charge of conspiracy in restraint of interstate commerce, with the *usual formal* and jurisdictional averments."

All that the court held was, "*bearing in mind* that such was the nature, object and scope of the conspiracy," it was immaterial that there was no allegation of a *specific intent to restrain such trade or commerce.* The

court does not hold or say it is not necessary to allege or *prove* a *criminal intent.* All the court says or holds is that where the indictment describes conduct, the necessary and direct consequences of which are to restrain trade, it is unnecessary to have a specific allegation of an intent *to restrain such trade.*

And why? Because the doing of an act which necessarily and directly produces a certain known result raises a presumption that the actor intended the result, and from the act itself the intention to accomplish the effect or result may be legitimately inferred, and in the absence of evidence to the contrary, conclusively inferred.

But this is merely a logical rule of proof. It is entirely unrelated to the principle of substantive law that in crimes which are *mala per se* a criminal intent must exist.

Suppose the defense in burglary was that defendant entered the house in his sleep, or as a practical joke, with intention of returning the article, and the court instructed the jury that what he did was "*conclusive* evidence of criminal intent," and, as the Court instructed the jury in the case at bar he "*cannot be heard to say the contrary*"—could such conviction stand?

And so the court's proposition in the "Patten Case," "By purposely engaging in a conspiracy which necessarily and directly produces the result which the statute is designed to prevent, they are in legal contemplation *chargeable* with intending that result" is quite a different one from that embodied in the charge given to the jury in this case—"if he purposely engaged in the conspiracy alleged, and the necessary and direct result

of such conspiracy was to restrain interstate commerce in the material described, he is legally chargeable with intending that result, *and cannot be heard to say the contrary.*"

The proposition announced by this court is that he is "*chargeable.*" That is the conduct—*may be* sufficient to support an inference of criminal intent.

The proposition of the trial court is that *the conduct itself is conclusive.*

It is hardly to be assumed that by the use of the word "*chargeable*" as employed in the "Patten Case," this court intended to overrule all of its prior decisions, to the effect that crimes, when *mala in se,* are made up of acts and *intents,* and that conspiracy is a crime which is *mala in se.*

VI.

THE DISTRICT COURT ERRED IN REFUSING TO CHARGE THE JURY THAT IT COULD NOT CONVICT THE DEFENDANTS FOR A CONSPIRACY OTHER THAN THE ONE DESCRIBED IN THE INDICTMENT.

The District Court was requested to charge the jury as follows:

1.

> "The prosecution must prove that the defendants, or some of them, engaged in the combination or conspiracy described in the indictment. You cannot convict any of the defendants of any combination or conspiracy other than the one described in the indictment." (R. 296.)

The court refused to so charge. Aside from the requested instruction as a correct statement of one of the most fundamental principles of criminal law, it was of peculiar importance in the case at bar. One of the principal arguments on behalf of the Millmen defendants to the jury was that it was incumbent upon the prosecution to prove the conspiracy described in the indictment and not *some other or different conspiracy.*

They were asked to examine the indictment and compare it with the evidence; to see whether or not the conspiracy proved, if one was in fact proved, was the same conspiracy as that charged and described in the indictment.

In reply to this argument, the learned Assistant to the Attorney General said to the jury:

> "The gentleman wants you to read all of that indictment. You can read it if you want to, and I don't care; I am not going to discuss the indictment much. I am not going to discuss it any, as a matter of fact. The court will tell you what the lawsuit is about, and the court will define the issues, and it is your business to follow the direction of the court and not the indictment. *We are not trying the indictment,* and it is not necessary to prove everything said in the indictment. The court will make that perfectly clear to you." (R. 285.)

Thus, the question of whether the conspiracy proved was the same as the one charged and described in the indictment, became a *most important issue in the case.*

The above quoted statement of the assistant to the Attorney General, coupled with the Court's refusal to give the requested instruction, unquestionably led the jury to believe they had a right to find the defendants guilty of *some other or different conspiracy than that alleged.*

Surely the question of whether or not the conspiracy proved, if any, conformed to that described in the indictment, was a question of fact for the determination of the jury, and should have been submitted to them by the Court, together with the other facts in the case.

VII.

THE DISTRICT COURT ERRED IN REFUSING TO CHARGE THE JURY ACCORDING TO THE DOCTRINE ANNOUNCED BY THIS COURT IN THE NASH CASE.

The District Court was requested to instruct the jury—

12.

> "That only such contracts and combinations are within the prohibitions of the Sherman Act as by reason of intent or the inherent nature of the contemplated acts, prejudice the public interest by unduly restricting competition or unduly obstructing the course of trade." (R. 300.)

The instruction is a literal quotation from the rule announced by this Court in the Nash Case. In terse, simple and concise form, it states the law applicable to criminal prosecutions for violation of the Sherman Act. It pointed out those essential elements which must exist before a criminal violation of the Act can be found. It was applicable to each of the Millmen defendants. It was not embodied or implied in the court's general charge; a very considerable portion of the argument of the Millmen to the jury had been devoted to an application of facts to the principles of law announced in the requested instruction. *The jury had been told that they would undoubtedly be so instructed.* (R. 286.)

Under the foregoing circumstances, the failure of the Court to give the instruction undoubtedly led the jury to believe that all that portion of counsel's argument was without merit.

But this is not all. The court refused to instruct the jury that it is only an *undue* and unreasonable restraint of trade that it deemed to be unlawful. On the contrary, the court in its instruction told the jury that it was sufficient if the trade was "*substantially*" (R. 282) or "*materially*" (R. 291) restrained.

The court thus in the very teeth of the Nash case sought to make "*substantially*" or "*materially*" the equivalent of "*unduly*" or "*unreasonably.*" That the two expressions are not equivalents needs no argument.

The precise question was decided by the Circuit Court of Appeals for the 2nd Circuit in *Trenton Potteries Co. et al.* v. *U. S.*, 300 Fed. 550.

Here the question presented was the refusal of the trial court to instruct the jury—

> "It is not every restraint of competition and not every restraint of trade that works an injury to the public; it is only an *undue* and *unreasonable* restraint of trade that has such an effect and is deemed to be unlawful."

Because the trial court refused this requested instruction, its decision was reversed, the Circuit Court of Appeals saying:

> "In this we think the learned court erred, and in a manner that went to the foundation of the prosecution."

The refusal to instruct that the restraint must be "*undue,*" as so clearly set forth in the Nash case, together

with the instruction actually given, that *effect is conclusive of purpose*, took away from the defendant every theory upon which they could have been acquitted by the jury.

VIII.

THE DISTRICT COURT ERRED IN REFUSING TO INSTRUCT THE JURY THAT IF THE MILLMEN'S LABOR COMMITTEE ACTED IN GOOD FAITH MERELY IN ORDER TO AVOID A STRIKE, THEY WERE NOT GUILTY.

The District Court was requested to instruct the jury—

17.

> "If you believe from the evidence, that the Millmen's Labor Committee in good faith, offered to recommend to their association the trade discount which the contractors were seeking, if the contractors on their part would accept Art. III as then demanded by the Labor Union in order to avoid tying up the industry in Chicago, then you are instructed that in making this offer the Labor Committee of the Millmen's Association did not violate any of the provisions of the Sherman Act, and your verdict must be not guilty." (R. 621, T. 399.)

This instruction embodied in simple and concise language *the entire defense of the labor committee of the Millmen defendants*. It was their justification for their conduct as disclosed by the evidence. It contained a correct statement of the law. It was applicable to each of the defendants to whom it applied. It was not embodied or implied in the court's general charge.

But the Court not only refused the request, but in its general charge, instructed that "*the desire to prevent a*

possible or probable strike and shutting down of factories would constitute no legitimate excuse" and also, if the jury believe *"any of the manufacturing defendants counseled, aided and abetted in having said agreement consummated, knowing why the agreement was desired by the union, and that the result would be to materially restrain interstate commerce in the material mentioned,"* they were guilty.

By the refusal to give the instruction requested and by the giving of that quoted, the only defense left to the Millmen defendants *was completely swept aside.* The action of the Court was equivalent *to a peremptory instruction to bring in a verdict of guilty,* which the jury of course promptly did.

IX.

THE CONDUCT PROVED WAS NOT VIOLATIVE OF THE SHERMAN ACT.

The conduct proved may be stated in a very few words. The contractors were soliciting the millmen for the correction of certain trade abuses and a trade discount. At the same time, the contractors were negotiating a new working agreement with the Brotherhood, which was insisting upon a change in Art. 3, which would enable its members to refuse to install material not bearing its label.

The Brotherhood was threatening a strike in the event its demands were not granted. The effect of such strike would have been to stop building operations in Chicago, which would in turn have resulted in the closing of the plants of the millmen defendants, causing them severe loss.

A committee of the millmen, fearing the result of the impending strike, offered a committee of the contractors to recommend to the association of the millmen the trade discount and the correction of the trade abuses, if the latter would recommend to its association the acceptance of the then demands of the Brotherhood with reference to a change in Art. 3, *if this became necessary to avoid a strike.* This offer was accepted by the contractors' committee, and each committee thereupon made the recommendation to its respective associations, which it had agreed with the other committee to do. *The recommendations of these two committees were rejected by each of their associations.*

The contractors finally, under pressure of threatened strike, agreed to a change in Art. 3. The *then* apparent effect of this change was to diminish the business of non-union manufacturers, so far as sales for Chicago local consumption were concerned, and *pro tanto*, to increase such business as to union manufacturers.

If these be the salient facts, it is inconceivable that any theory can be evolved which would bring the conduct of the millmen within the prohibition of the Sherman Act. Certainly such theory cannot be made to rest upon any pronouncement yet made by this court, or, so far as known, any other court.

Whatever may be said as to the scope of the intent of the labor defendants, surely the intent of the millmen can by no ingenuity of reasoning be transferred *on these facts* from a primary local purpose to save their own industries from being closed, to an intent to restrain, burden or obstruct interstate commerce.

And since this court has time after time held that

when the primary intent is not to obstruct interstate commerce, but to attain some legitimate business end, a resulting interference or burden upon interstate commerce will be regarded as indirect and not within the prohibition of the statute—and this even in cases where the interference with interstate commerce was by illegal and criminal means as in the First Coronado and United Leather Workers Cases—it necessarily follows that even if it could be conceived that the labor committee in any manner or to any degree brought about the condition complained of, such interference with interstate commerce as may have resulted was indirect and did not render the members of the labor committee guilty of having violated the act.

Nor is it understod from the opening brief that the Government now contends if these facts be true, that the millmen should be held to have violated the act.

But as to whether these were in truth the salient facts, the millmen were entitled to the verdict of a jury under proper instructions from the court. This they did not have; for the District Court in its charge closed every avenue and eliminated every theory upon which the jury might acquit.

X.

AS TO THE MILLMEN OTHER THAN THEIR LABOR COMMITTEE, NO THEORY OF GUILT CAN BE EVOLVED.

If it could be conceived that the members of the labor committee, by reason of their agreement with the contractors committee, in some way brought themselves within the prohibitions of the act, surely their criminal responsibility cannot be extended to the other millmen defendants.

As to their connection with the matter, there is not the slightest conflict in the evidence. They did not authorize the labor committee to make the offer to recommend, either directly or indirectly. They did not know it was going to be made. They did not know it had been made until April 19th, when they were told of it at a meeting of Division G, at which time both contracts with the inside and outside carpenters had been made and were in operation.

They did not ratify the acts of their labor committee as to the suggested trade discount in any manner or form. On the contrary they repudiated the suggestion and declined to grant the discount.

They expected no benefit from the change in Art. 3 and derived none. On the contrary, because of their lack of equipment to manufacture standard material they each and all regarded the change as a business disaster.

They were opposed to a change in Art. 3 and so expressed themselves. The Government's own witness, Hooper, secretary of Division G, testified he remembered that defendant Dick, of Von Platen & Dick Co., had said that if Art. 3 was changed, he wanted to sell his mill; (R. 44) that the defendant Traeger of the same company had said he was opposed to any change in Art. 3 because they bought a good deal of material from manufacturers outside of Chicago; (R. 45) that from 90 to 95 per cent of the members of Division G said they were opposed to any change. (R. 45.)

The witness Rinn testified that Mr. Dick was primarily interested and opposed the change in Art. 3 because of his stock of doors. "He asked where he was going to

get his doors, stating that he had been buying them wherever he pleased, and now would have to get other sources of supply"; that the labor committee should have seen that this article was not as effective as it was. "If this thing goes into effect I am willing to sell my place of business; *I am through.*" (R. 255.) That the defendant Traeger's line of talk was just like his partner Dick; that Stewart was opposed to the change "and said so in the most vehement language"; (R. 256) that defendant Dierssen of the Chicago Sash, Door & Blind Mfg. Co. did not have much to say because he and his company were not personally affected, as they did special work and had no occasion to use standard or stock material. (R. 255.)

There was a stipulation between the prosecution and the defense that if the other defendants were called and testified as to what had occurred at the meetings of Division G, they would testify in substance and effect as had been testified by Rinn. (R. 277.)

To contradict or impeach this mass of testimony as to the attitude of the remaining members of Division G, there is nothing. The testimony cannot be disregarded. It comes from reputable witnesses. It is unchallenged; it is unimpeached.

Upon what theory, then could these millmen defendants be held?

The injustice of the conviction of the defendants Haring and his corporation, Melrose Mill Co., is even more aggravated. Haring and his company were not members of Division G until August 12, 1918, long after the events complained of had transpired. The first meeting of Division G which Haring attended was on

the 17th day of December, 1918. He knew nothing of what had transpired at previous meetings; he had nothing to do with the matter. He was called as a witness and had with him documentary evidence showing the precise date on which he joined Division G and the first meeting he attended. (R. 281.)

So stands the record as to the millmen defendants other than the members of the labor committee. It is respectfully submitted there is no possible theory upon which their conviction should be permitted to stand.

Conclusion.

The court is very very earnestly requested to consider the injustice of permitting to stand the conviction of manufacturers of known and proven character, because, with the utmost good faith and without any thought of violating the law, three of their number, in order to avoid a strike, the closing of their industry and the resulting financial loss, agreed to make a certain recommendation, which was not accepted.

Respectfully submitted,

Robert W. Childs,
Albert Fink.